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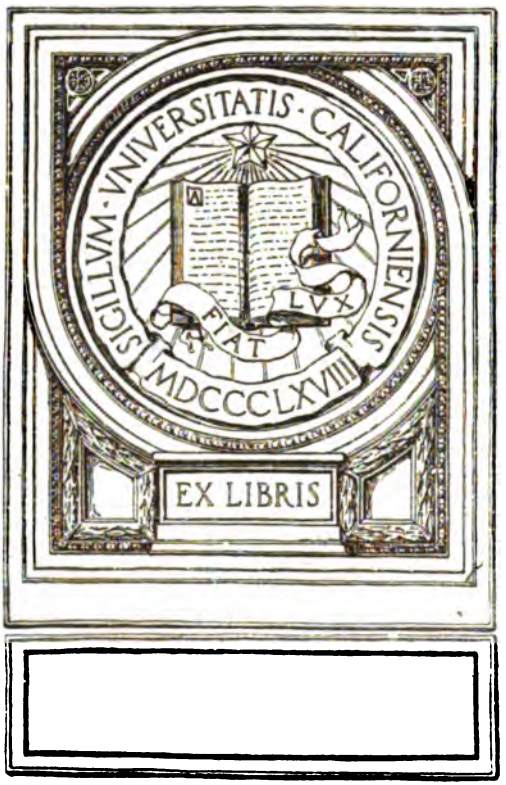
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A

TREATISE

ON THE

FEDERAL CORPORATION TAX LAW

INCLUDING THEREIN

A Commentary on the Act itself, an Appendix containing the Text of the Act all Rules and Regulations of the Treasury Department, relating in any way to the Act; Text of all Laws relating to the Collection, Remission and Refund of Internal Revenue; Text applicable to the Administration of the Federal Corporation Tax Law, and Opinions of the Attorney-General bearing upon the Meaning of the Act.

BY

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UNIV. OF CALIFORNIA

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PREFACE.

The purpose of the author in presenting a Treatise on the Federal Corporation Tax is to provide both the profession and the public generally with a comprehensive text book on a subject which has up to the present time received but little attention. In the present volume will be found not only a full discussion of the text of the law itself, but there has been added as well a synopsis of all the rulings of the Treasury Department on the subject, together with the opinions of the Attorney-General and the decisions of the courts bearing thereon. It is the hope of the Author that in writing a book of this character he will have furnished not only to the legal profession but to federal officials and corporate officers generally a work which they will find both helpful and useful.

THOMAS G. FROST.

NEW YORK CITY, *November* 2, 1911.

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FEDERAL
CORPORATION TAX LAW

CHAPTER I.

NATURE OF THE FEDERAL CORPORATION TAX ENACTMENT.

Sec. 1. History of the Corporation Tax Law of 1909. — The so-called "Federal Corporation Tax Enactment" was the outcome of political forces which brought about the engrafting of a corporation tax rider upon the so-called Payne Tariff Act of 1909.

Immediately after the inauguration of President Taft he called Congress in extraordinary session for the purpose of revising the Dingley Tariff Act. While the new tariff act was under discussion before Congress a strong effort was made to incorporate in the new tariff act a provision for a tax upon both individual and corporate incomes. Partly as a compromise and partly because of the inherent fear on the part of the dominant party that the new tariff act would not be sufficient to produce the revenue needed for proper governmental purposes, the Federal Corporation Tax Enactment was proposed and ultimately became a law. It became a law August 5, 1909. The tax itself is embodied in a single section of the Payne Tariff Act, the same being numbered as section 38. See U. S. Revised Statutes 1909, pp. 11-112-117; also Appendix A.

Sec. 2. The Tax Is Undoubtedly an Excise Tax. — The Corporation Tax Act (section 1) attempts to characterize its own nature when it declares that certain corporations named in the act shall be subject to pay annually a *special excise tax* with reference to the carrying on or doing business by such corporations, joint stock companies or associations or insurance company. The subject of the tax is thus by statute clearly defined to be the carrying on or doing business by the several classes enumerated in the act.

Neither the properties of corporations or their franchises are made the subject of the tax. Indeed, so far as their property or franchises are concerned, it is only their use as instruments of business that are made the subject of the tax. Of course the specific designation of the tax as a special excise in the act itself is by no means conclusive upon the courts in determining the nature of the tax attempted to be levied by Congress.

The tax is not an "income tax," as that word is used in the United States Constitution. It only becomes necessary to ascertain the income of the business of the various companies made subject to the tax in order to furnish a means of measuring the amount of the tax, which in its turn is based not upon that income, but upon the occupation from which it is derived.

That the tax is strictly a piece of excise legislation is shown conclusively by the decision of the Supreme Court in Flint *v.* Stone Tracey & Company *et al.* (decided by the United States Supreme Court, March 13, 1911) where it was said that:

"While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, nevertheless the declaration of the lawmaking power is entitled to much weight, and in this statute the intention is expressly declared to impose a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association or company. It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof, in a sum equivalent to one per centum upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organization of the

character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity. In the case of insurance companies the tax is imposed upon the transaction of such business by companies organized under the laws of the United States or any State or Territory as heretofore stated.

This tax, it is expressly stated, is to be equivalent to one per centum of the entire net income over and above $5,000 received from *all sources* during the year. This is the measure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies or associations or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income with the deduction stated, received not only from property used in business, but from every source. This view of the measure of the tax is strengthened when we note that as to organizations under the laws of foreign countries the amount of net income over and above $5,000 includes that received from business transacted and capital invested in the United States, the Territories, Alaska, and the District of Columbia.

It is further strengthened when the subsequent sections are considered as to deductions in ascertaining net income and requiring returns from those subject to the act. Under the second paragraph the net income is to be ascertained by certain deductions from the gross amount of income received within the year "from all sources;" and the return to be made to the collector of internal revenue under the third section is required to show the gross amount of the income received during the year "from all sources." The evident purpose is to secure a return of the entire income derived from property actively engaged in the business. This interpretation of the act, as resting upon the doing of business is sustained by the reasoning in Spreckels Sugar Refining Co. *v.* McClain, 192 U. S. 397, in which a special tax measured by the gross receipts of the business of refining oil and sugar was sustained as an excise in respect to the carrying on or doing of such business." (220 U. S. 107.)

Sec. 3. The Federal Corporation Tax Is Not a Franchise Tax. — No tax is imposed upon any corporation or association unless it has actually done business within the period of time designated in the act. Therefore, franchise cannot be the subject-matter of the tax. In this connection a distinction is to be drawn between the tax on franchises as privileges, and taxes on franchises as property. (See 1 Cooley on Taxation, pp. 676, 677, 686.) Even if the corporation tax under discussion be admitted *pro arguendo* to rest directly on the franchises of the corporations included in the act, the tax is to be regarded as a privilege tax and

not a property tax. On this subject the United States Supreme Court in Stella P. Flint *v.* Stone Tracey Company (218 U. S. 107), spoke as follows:

It is next contended that the attempted taxation is void because it levies a tax upon the exclusive right of a state to grant corporate franchises, because it taxes franchises which are the creation of the State in its sovereign right and authority. This proposition is rested upon the implied limitation upon the powers of national and state governments to take action which encroaches upon or cripples the exercise of the exclusive power of sovereignty in the other. It has been held in a number of cass that the State cannot tax franchises created by the United States or the agencies or corporations which are created for the purpose of carrying out governmental functions of the United States. McCulloch *v.* Maryland, 4 Wheat. 316; Osborn *v.* Bank, 9 Wheat. 738; Railroad Co. *v.* Peniston, 18 Wall. 5; California *v.* Central Pac. R. R. Co., 127 U. S. 1.

An examination of these cases will show that in each case where the tax was held invalid the decision rested upon the proposition that the corporation was created to carry into effect powers conferred upon the federal government in its sovereign capacity, and the attempted taxation was an interference with the effectual exercise of such powers.

In Osborn *v.* The Bank, *supra*, a leading case upon the subject, whilst it was held that the Bank of the United States was not a private corporation, but a public one, created for national purposes, and therefore beyond the taxing power of the State, Chief Justice Marshall, in delivering the opinion of the court, conceded that if the corporation had been originated for the management of an individual concern, with private trade and profit for its great end and principal object, it might be taxed by the State. Said the Chief Justice:

"If these premises (that the corporation was one of private character) were true, the conclusion drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs would no mere exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner."

The inquiry in this connection is: How far do the implied limitations upon the taxing power of the United States over objects which would otherwise be legitimate subjects of federal taxation, withdraw them from the reach of the federal government in raising revenue, because they are pursued under franchises which are the creation of the States?

In approaching this subjct we must remember that enactments levying taxes, as other laws of the federal government when acting within constitutional authority, are the supreme law of the land. The Constitution contains only two limitations on the right of Congress to levy excise taxes; they must be levied for the public welfare and are required to be uniform throughout the United States. As Mr. Chief Justice Chase said, speaking for the court in License Tax Cases, 5 Wall. 462, 471:

"Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject and may be exercised at discretion."

The limitations to which the chief justice refers were the only ones imposed in the Constitution upon the taxing power.

In McCray *v.* United States, 195 U. S. 27, this court sustained a federal tax on oleomargarine, artificially colored, and held that while the fifth and tenth amendments qualify, so far as applicable all the provisions of the Constitution, nothing in those amendments operates to take away the power to tax conferred by the Constitution on the Congress. In that case it was contended that the subject taxed was within the exclusive domain of the States, and that the real purpose of Congress was not to raise revenue but to tax out of existence a substance not harmful of itself, and one which might be lawfully manufactured and sold; but the only constitutional limitation which this court conceded, in addition to the requirements of uniformity, and that for the sake of argument only so far as concerned the case then under consideration, was that Congress is restrained from arbitrary impositions or from exceeding its powers in seeking to effect unwarranted ends. The limitation of uniformity was deemed sufficient by those who framed and adopted the Constitution. The courts may not add others. Patton *v.* Brady, 184 U. S. 608, 622. And see United States *v.* Singer, 15 Wall. 111, 121; Nicoll *v.* Ames, 173 U. S. 509, 515.

We must, therefore, enter upon the inquiry as to implied limitations upon the exercise of the federal authority to tax because of the sovereignty of the States over matters within their exclusive jurisdiction, having in view the nature and extent of the power specifically conferred upon Congress by the Constitution of the United States. We must remember, too, that the revenues of the United States must be obtained in the same territory, from the same people, and excise taxes must be collected from the same activities as are also reached by the States in order to support their local government.

Sec. 4. The Tax Is Not a Direct Tax Upon Shares or the Income Thereof. — The tax is not a direct tax upon shares of the stockholders in the companies to the business of which the tax attaches, or upon the income of such stockholders from their shares. On this subject the United States Supreme Court in Stella P. Flint *v.* Stone Tracey & Company (220 U. S. 107), speaks as follows:

In Home Ins. Co. *v.* New York, 134 U. S. 594, a tax was sustained upon the right or privilege of the Home Insurance Company to be a corporation and to do business within the State in a corporate capacity, the tax being measured by the extent of the dividends of the corporation in the current year upon the capital stock. Although a very large amount, nearly two or three millions of capital stock, was invested in bonds of the United States expressly exempted from taxation by a statute of the United States, the tax was sus-

tained as a mode of measurement of a privilege tax which it was within the lawful authority of the State to impose. Mr. Justice Field, who delivered the opinion of the court, reviewed the previous cases in this court, holding that the State could not tax or burden the operation of the Constitution and of laws enacted by the Congress to carry into execution the powers vested in the general government. Yielding full assent to those cases, Mr. Justice Field said of the tax then under consideration:

"It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United States composing a part of that stock. The statute designates it a tax upon the 'corporate franchise or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year."

In that case, in the course of the opinion, previous cases of this court were cited with approval. Society for Savings *v.* Coit, 6 Wall. 594; Provident Institution *v.* Massachusetts, 6 Wall. 611.

In the Coit case a privilege tax upon the total amount of deposits in a savings bank was sustained, although $500,000 of the deposits had been invested in securities of the United States and declared by Act of Congress to be exempt from taxation by State authority. In that case the court said:

"Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of the State government. Authority to that effect resides in the State independently of the federal government, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in federal securities."

In Provident Institution *v.* Massachusetts, *supra*, a like tax was sustained. It is, therefore, well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed. See in this connection Maine *v.* Grand Trunk Ry., 142 U. S. 217, as interpreted in Galveston, Harrisburg & San Antonio Ry. Co. *v.* Texas, 210 U. S. 217, 226.

Sec. 5. The Tax Is Not a Direct Tax Even in the Case of Companies Engaged Mainly or Wholly in the Business of Handling or Dealing in Real Estate. — The tax under discussion clearly does not become direct merely by reason of the fact that the companies who are required to pay the tax chance to be engaged mainly or even wholly in the business of handling or dealing in real estate. The United States Supreme Court, on this subject, in Flint *v.* Stone Tracey & Co. (220 U. S. 107), spoke as follows:

It is especially objected that certain of the corporations whose stockholders challenge the validity of the tax are so-called real estate companies, whose business is principally the holding and management of real estate. These cases are No. 415, Cedar Street Co. *v.* Park Realty Co.; No. 431, Percy H. Brundage *v.* Broadway Realty Co.; No. 443, Phillips *v.* Fifty Associates *et al.*; No. 446, Mitchell *v.* Clark Iron Co.; No. 412, William H. Miner *v.* Corn Exchange Bank *et al.*, and No. 457, Cook *et al. v.* Boston Wharf Co.

In No. 412, Miner *v.* Corn Exchange Bank *et al.*, the bank occupies a building in part and rents a large part to tenants.

Of the realty companies the Park Realty Company was organized to "work, develop, sell, convey, mortgage, or otherwise dispose of real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, apartment houses, etc.; to make and carry out contracts in the manner specified concerning buildings * * * and generally to deal in, sell, lease, exchange, or otherwise deal with lands, buildings, and other property, real or personal," etc.

At the time the bill was filed the business of the company related to the Hotel Leonori and the bill averred that it was engaged in no other business except the management and leasing of the hotel.

The Broadway Realty Company was formed for the purpose of owning, holding, and managing real estate. It owns an office building and certain securities. The office building is let to tenants, to whom light and heat are furnished, and for whom janitor and similar services are performed.

The Fifty Associates are operating under a charter to own real estate with power to build, improve, alter, pull down, and rebuild, and to manage, exchange, and dispose of the same.

The Clark Iron Company was organized under the laws of Minnesota, owns and leases ore lands for the purpose of carrying on mining operations, and receives a royalty depending upon the quantity of ore mined.

The Boston Wharf Company is operating under a charter authorizing it to acquire lands and flats, with their privileges and appurtenances, and to lease, manage, and improve its property in whatever manner shall be deemed expedient by it, and to receive dockage and wharfage for vessels laid at its wharfs. What we have said as to the character of the corporation tax as an excise tax disposes of the contention that it is direct and therefore requiring apportionment by the Constitution.

Sec. 6. The Federal Corporation Tax Is Not in the Nature of an Infraction Upon the General Powers of the States to Authorize the Formation of Corporations and Joint Stock Companies. — That the Federal Corporation Tax is not an infraction of the general power of the States to authorize the formation of corporations and joint stock companies is fully sustained by the decisions of the United States Supreme Court.

In Veazie Bank *v.* Fenno, 8 Wall. 533, 547, that court spoke as follows:

Is it, then, a tax on a franchise granted by a State, which Congress, upon any principle exempting the reserved powers of the States from impairment by taxation, must be held to have no authority to lay and collect?

We do not say that there may not be such a tax. It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government, are not proper subjects of the taxing power of Congress. But it cannot be admitted that franchises granted by a State are necessarily exempt from taxation; for franchises are property, often very valuable and productive property; and when not conferred for the purpose of giving effect to some reserved power of a State, seem to be as properly objects of taxation as any other property.

But in the case before us the object of taxation is not the franchise of the bank, but property created, or contracts made and issued under the franchise, or power to issue bank bills. A railroad company, in the exercise of its corporate franchises, issues freight receipts, bills of lading, and passenger tickets, and it cannot be doubted that the organization of railroads is quite as important to the State as the organization of banks. But it will hardly be questioned that these contracts of the company are objects of taxation within the powers of Congress, and not exempted by any relation to the State which granted the charter of the railroad. And it seems difficult to distinguish the taxation of notes issued for circulation from the taxation of these railroad contracts. Both descriptions of contracts are means of profit to the corporations which issue them; and both as we think may properly be made contributory to the public revenue. Pages 547, 548.

On this subject the United States Supreme Court in Flint *v.* Stone Tracey & Co. (220 U. S. 107), spoke as follows:

While the tax in this case, as we have construed the statute, is upon the exercise of the privilege of doing business in a corporate capacity, as such business is done under authority of State franchises, it becomes necessary to consider in this connection the right of the federal government to tax the activities of private corporations which arise from the exercise of franchises granted by the State in creating and conferring powers upon such corporations. We think it is the result of the cases heretofore decided in this court that such business activities, though exercised because of State created franchises, are not beyond the taxing power of the United States. Taxes upon rights exercised under grants of State franchises were sustained by this court in Railroad Company *v.* Collector, 100 U. S. 595; United States *v.* Erie R. R. Co., 106 U. S. 327; Spreckels Sugar Refining Co. *v.* McClain, 192 U. S. 397.

It is true that in those cases the question does not seem to have been directly made, but, in sustaining such taxation, the right of the federal government to reach such agencies was necessarily involved. The question was raised and decided in the case of Veazie Bank *v.* Fenno, 8 Wall. 533. In that well-known case a tax upon the notes of a State bank issued for circulation was sustained. Mr. Chief Justice Chase, in the course of the opinion, said:

Is it, then, a tax on a franchise granted by a State, which Congress upon

any principle exempting the reserved powers of the States from impairment by taxation must be held to have no authority to lay and collect?

We do not say that there may not be such a tax. It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government, are not proper subjects of the taxing power of Congress. But it cannot be admitted that franchises granted by a State are necessarily exempt from taxation; for franchises are property, often very valuable and productive property; and when not conferred for the purpose of giving effect to some reserved power of a state, seem to be as properly objects of taxation as any other property.

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It is true that the decision in the Veazie Bank case was also placed in a measure upon the authority of the United States to control the circulating medium of the country, but the force of the reasoning which we have quoted has not been denied or departed from.

In Thomas *v.* United States, 192 U. S., *supra*, a federal tax on the transfer of corporate shares in State corporations was upheld as a tax upon business transacted in the exercise of privileges afforded by the State laws in respect to corporations.

In Nicoll *v.* Ames, 173 U. S. 509, a federal tax was sustained upon the enjoyment of privileges afforded by a board of trade incorporated by the State of Illinois.

When the Constitution was framed the right to lay excise taxes was broadly conferred upon the Congress. At that time very few corporations existed. If the mere fact of State incorporation, extending now to nearly all branches of trade and industry, could withdraw the legitimate objects of federal taxation from the exercise of the power conferred, the result would be to exclude the national government from many objects upon which indirect taxes could be constitutionally imposed. Let it be supposed that a group of individuals, as partners, were carrying on the business upon which Congress concluded to lay an excise tax. If it be true that the forming of a State corporation would defeat this purpose, by taking the necessary steps required by the State law to create a corporation and carrying on the business under rights granted by a State statute, the federal tax would become invalid, and that source of national revenue be destroyed, except as to the business in the hands of indi-

viduals or partnerships. It cannot be supposed that it was intended that it should be within the power of individuals acting under State authority to thus impair and limit the exertion of authority which may be essential to national existence.

In this connection South Carolina *v.* United States, 199 U. S. 437, is important. In that case it was held that the agents of the State government, carrying on the business of selling liquor under State authority, were liable to pay the internal revenue tax imposed by the federal government. In the opinion previous cases in this court were reviewed and the rule to be deduced therefrom stated to be that the exemption of State agencies and instrumentalities from national taxation was limited to those of a strictly governmental character, and did not extend to those used by the State in carrying on business of a private character. 199 U. S. 461.

The cases unite in exemption from federal taxation the means and instrumentalities employed in carrying on the governmental operations of the State. The exercise of such rights as the establishment of a judiciary, the employment of officers to administer and execute the laws and similar governmental functions cannot be taxed by the federal government. The Collector *v.* Day, 11 Wall. 113; United States *v.* R. R. Co., 17 Wall. 322; Ambrosini *v.* United States, 187 U. S. 1.

But this limitation has never been extended to the exclusion of the activities of a merely private business from the federal taxing power, although the power to exercise them is derived from an act of incorporation by one of the States. We, therefore, reach the conclusion that the mere fact that the business taxed is done in pursuance of authority granted by a State in the creation of private corporations does not exempt it from the exercise of federal authority to levy excise taxes upon such privileges.

But it is insisted this taxation is so unequal and arbitrary in the fact that it taxes a business when carried on by a corporation and exempts a similar business when carried on by a partnership or private individual as to place it beyond the authority conferred upon Congress. As we have seen, the only limitation upon the authority conferred is uniformity in laying the tax, and uniformity does not require the equal application of the tax to all persons or corporations who may come within its operation, but is limited to geographical uniformity throughout the United States. This subject was fully discussed and set at rest in Knowlton *v.* Moore, 178 U. S., *supra*, and we can add nothing to the discussion contained in that case.

In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another. For examples of such taxation, see cases in the margin. decided in this court, upholding the power.

Many instances might be given where this court has sustained the right of a State to select subjects of taxation, although as to them the Fourteenth Amendment imposes a limitation upon State legislatures, requiring that no person shall be denied the equal protection of the laws. See some of them noted in the margin.

In Bell's Gap R. R. Co. *v.* Pennsylvania, 134 U. S. 232, dealing with the Fourteenth Amendment, which in this respect imposes limitations only on State authority, this court said:

"The provision in the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or the people of the State in framing their constitution."

It is insisted in some of the briefs assailing the validity of this tax that these cases have been modified by Southern R. R. Co. *v.* Greene, 216 U. S. 400. In that case a corporation organized in a State, other than Alabama, came into that State in compliance with its laws, paid the license tax and property tax imposed upon other corporations doing business in the State, and acquired under direct sanction of the laws of the State a large amount of property therein and when it was attempted to subject it to a further tax on the ground that it was for the privilege of doing business as a foreign corporation, when the same tax was not imposed upon State corporations doing precisely the same business, in the same way, it was held that the attempted taxation was merely arbitrary classification, and void under the Fourteenth Amendment. In the case the foreign corporation was doing business under the sanction of the State laws no less than the local corporation; it had acquired its property under sanction of those laws; it had paid all direct and indirect taxes levied against it, and there was no practical distinction between it and a State corporation doing the same business in the same way.

Sec. 7. The Fact That the Federal Corporation Tax Operates Upon Public Service Companies Does Not Affect the Validity of the Act. — The business of public service corporations is not intrinsically an operation of the State which created the company. Even were it so, it has been held that the United States may tax a business conducted either for or by the State itself. In this connection attention is called to the remarks of the Supreme Court in South Carolina *v.* United States, 199 U. S. 437. In that case, Justice Brewer, referring to the limitations upon the United States and States implied in the Constitution, spoke as follows:

Among those matters which are implied, though not expressed, is that the nation may not, in the exercise of its powers, prevent a State from discharging the ordinary functions of government, just as it follows from the second clause of Article VI. of the Constitution, that no State can interfere with the

free and unembarrassed exercise by the national government of all the powers conferred upon it. Pages 451, 452.

And concerning the extent to which the States may go into business if they see fit and the consequent restriction of the taxing power of the United States, if business done by a State should be held free from federal taxation, it was said:

The right of South Carolina to control the sale of liquor by the dispensary system has been sustained. Vance *v.* W. A. Vandercook Co., No. 1, 170 U. S. 438. The profits from the business in the year 1901, as appears from the findings of fact, were over half a million dollars. Mingling the thought of profit with the necessity of regulation may induce the State to take possession, in like manner, of tobacco, oleomargarine, and all other objects of internal revenue tax. If one State finds it thus profitable other States may follow, and the whole body of internal revenue tax be thus stricken down.

More than this, there is a large and growing movement in the country in favor of the acquisition and management by the public of what are termed public utilities, including not merely therein the supply of gas and water, but also the entire railroad system. Would the State by taking into possession these public utilities lose its republican form of government?

We may go even a step further. There are some insisting that the State shall become the owner of all property and the manager of all business. Of course this is an extreme view, but its advocates are earnestly contending that thereby the best interests of all citizens will be subserved. If this change should be made in any State, how much would that State contribute to the revenue of the nation? If this extreme action is not to be counted among the probabilities, consider the result of one much less so. Suppose a State assumes under its police power the control of all those matters subject to the internal revenue tax and also engages in the business of importing all foreign goods. The same argument which would exempt the sale by a State of liquor, tobacco, etc., from a license tax would exempt the importation of merchandise by a State from import duty. While the State might not prohibit importations, as it can the sale of liquor, by private individuals, yet paying no import duty it could undersell all individuals and so monopolize the importation and sale of foreign goods.

Obviously if the power of the State is carried to the extent suggested, and with it is relief from all federal taxation, the national government would be largely crippled in its revenues. Indeed, if all the States should concur in exercising their powers to the full extent, it would be almost impossible for the nation to collect any revenues. In other words, in this indirect way it would be within the competency of the States to practically destroy the efficiency of the national government. If it be said that the States can be trusted not to resort to any such extreme measures, because of the resulting interference with the efficiency of the national government, we may turn to the opinion of Mr. Chief Justice Marshall, in M'Culloch *v.* Maryland, *supra* (p. 431), for a complete answer:

"But is this a case of confidence? Would the people of any one State trust

those of another with a power to control the most insignificant operations of their State government? We know they would not. Why, then, should we suppose that the people of any one State should be willing to trust those of another with the power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused."

In other words, we are to find in the Constitution itself the full protection to the nation, and not to rest its sufficiency in either the generosity or the neglect of any State.

There is something of a conflict between the full power of the nation in respect to taxation and the exemption of the State from federal taxation in respect to its property and a discharge of all its functions. Where and how shall the line between them be drawn? We have seen that the full power of collecting license taxes is in the terms granted to the national government with only the limitations of uniformity and the public benefit. The exemption of the State's property and its functions from federal taxation is implied from the dual character of our federal system and the necessity of preserving the State in all its efficiency. In order to determine to what extent that implication will go we must turn to the condition of things at the time the Constitution was framed. What, in the light of that condition, did the framers of the Constitution intend should be exempt. Certain is it that modern notions as to the extent to which the functions of a State may be carried had then no hold. Whatever Utopian theories may have been presented by any writers were regarded as mere creations of fancy, and had no practical recognition. It is true that monopolies in respect to certain commodities were known to have been granted by absolute monarchs, but they were not regarded as consistent with Anglo-Saxon ideas of government. The opposition to the Constitution came not from any apprehension of danger from the extent of power reserved to the States, but, on the other hand, entirely through fear of what might result from the exercise of the powers granted to the central government. While many believed that the liberty of the people depended on the preservation of the rights of the States, they had no thought that those States would extend their functions beyond their then recognized scope, or so as to imperil the life of the nation.

Looking, therefore, at the Constitution in the light of the conditions surrounding at the time of its adoption, it is obvious that the framers in granting full power over license taxes to the national government meant that the power should be complete, and never thought that the States by extending their functions could practically destroy it. Pages 454–457.

The United States Supreme Court, in Flint *v.* Stone Tracey & Co. (220 U. S. 107), on this subject, spoke as follows:

We come to the question, "Are so-called public service corporations, such as the Coney Island & Brooklyn Railroad Co., in case No. 409, and the Interborough Rapid Transit Co., No. 442, exempted from the operation of this

statute?" In the case of South Carolina *v.* United States, 199 U. S. 437, the court held that when a State, acting within its lawful authority, undertook to carry on the liquor business it did not withdraw the agencies of the State carrying on the traffic from the operation of the internal revenue laws of the United States. If a State may not thus withdraw from the operation of a federal taxing law a subject-matter of such taxation, it is difficult to see how the incorporation of companies whose service, though of a public nature, is, nevertheless, with a view to private profit, can have the effect of denying the federal right to reach such properties and activities for the purposes of revenue.

It is no part of the essential governmental functions of a State to provide means of transportation, supply artificial light, water, and the like. These objects are often accomplished through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are nevertheless private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred.

The true distinction is between the attempted taxation of those operations of the State essential to the execution of its governmental functions, and which the State can only do itself, and those activities which are of a private character. The former the United States may not interfere with by taxing the agencies of the State in carrying out its purposes; the latter, although regulated by the State and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate federal taxation.

Applying this principle, we are of opinion that the so-called public service corporations represented in the cases at bar are not exempt from the tax in question. Railroad Co. *v.* Penniston, 18 Wall. 5, 33.

Sec. 8. The Federal Corporation Tax Is Not Imposed Upon State or Municipal Bonds or Upon the Income of Such Bonds Forming Part of the Business Assets of the Company Whose Business Is Taxed. — It is conceded of course that the bonds of a State or of a municipality of a State, or the income derived therefrom, cannot be made the subject of a federal tax. Pollock *v.* Farmers Loan & Trust Co., 157 U. S. 429, 583, 586.

The reason of this is of course that the power to issue such is an essential element of the sovereignty of the State and cannot be impaired by federal legislation. However, this principle in no wise affects the validity of the Federal Income Tax for the reason that the same is not imposed on the said bonds or on the income of such bonds, but is imposed on the business of the company which holds the bonds as part of its business assets and the income from such bonds, as well as from the company's other

business, assets and activities, is used only as a measure of the amount of the tax on the business.

On this subject the United States Supreme Court in Flint *v.* Stone Tracey Co. (220 U. S. 107), spoke as follows:

It is further contended that some of the corporations, notably insurance companies, have large investments in municipal bonds and other nontaxable securities, and in real estate and personal property not used in the business; that therefore the selection of the measure of the income from all sources is void, because it reaches property which is not subject of taxation, upon the authority of the Pollock case, supra. But this argument confuses the measure of the tax upon the privilege with direct taxation of the estate or thing taxed. In the Pollock case, as we have seen, the tax was held unconstitutional because it was in effect a direct tax on the property solely because of its ownership.

Nor does the adoption of this measure of the amount of the tax do violence to the rule laid down in Galveston, Harrisburg & San Antonio Ry. Co. *v.* Texas, 210 U. S. 217, nor the Western Union Tel. Co. *v.* Kansas, 216 U. S. 1. In the Galveston case it was held that a tax imposed by the State of Texas equal to one per cent. upon the gross receipts "from every source whatever," of lines of railroad lying wholly within the State, was invalid as an attempt to tax gross receipts derived from the carriage of passengers and freight in interstate commerce, which in some instances was an attempt to burden commerce among the States, and the fact that it was declared to be "equal to" one per cent. made no difference, as it was merely an effort to reach gross receipts by a tax not even disguised as an occupation tax, and in nowise helped by the words "equal to." In other words, the tax was held void, as its substance and manifest intent was to tax interstate commerce as such.

In the Western Union Telegraph cases the State undertook to levy a graded charter fee upon the entire capital stock of $100,000,000 of the Western Union Telegraph Company, a foreign corporation, and engaged in commerce among the States, as a condition of doing local business within the State of Kansas. This court held, looking through forms and reaching the substance of the thing, that the tax thus imposed was in reality a tax upon the right to do interstate commerce within the State and an undertaking to tax property beyond the limits of the State; that whatever the declared purpose, when reasonably interpreted, the necessary operation and effect of the act in question was to burden interstate commerce and to tax property beyond the jurisdiction of the State, and it was therefore invalid.

There is nothing in these cases contrary, as we shall have occasion to see, to the former rulings of this court which hold that where a tax is lawfully imposed upon the exercise of privileges within the taxing power of the State or nation, the measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable. The distinction lies between the attempt to tax the property as such and to measure a legitimate tax upon the privileges involved in the use of such property.

Sec. 9. As an Excise the Tax Is Uniform Under Clause 1 of Section 8 of Article 1 of the United States Constitution. — The federal corporation tax complies with the constitutional rule as to uniformity (under clause 1 of section 8 of article 1 of the United States Constitution) even though it is laid upon other kinds of business than insurance only, provided that such business is conducted by a corporation or joint stock company having shares of stock. The only uniformity called for by the clause of the Constitution here referred to is geographical uniformity, and when this is conceded, the claim that the tax is uniform is likewise conceded.

Upon this subject the United States Supreme Court in Flint *v.* Stone Tracey Co. (220 U. S. 107), spoke as follows:

> The applicable provisions of the Constitution of the United States in this connection are found in article 1, section 8, clause 1; in article 1, section 2, clause 3; and article 1, section 9, clause 4. They are respectively:
>
> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.
>
> "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers.
>
> "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."
>
> It was under the latter requirement as to apportionment of direct taxes according to population that this court in the Pollock case held the statute of 1894 to be unconstitutional. Upon the rehearing of the case Mr. Chief Justice Fuller, who spoke for the court summarizing the effect of the decision, said:
>
> "We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such. 158 U. S. 635."
>
> And as to excise taxes, the chief justice said:
>
> "We do not mean to say that an act laying by apportionment a direct tax on all real estate or personal property, or the income thereof might not also lay excise taxes on business, privileges, employments, and vocations. Page 637."
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> The Pollock case was before this court in Knowlton *v.* Moore, 173 U. S. 41. In that case this court sustained an excise tax upon the transmission of property by inheritance. It was contended there as here, that the case was ruled by the Pollock case, and of that case this court, speaking by the present chief justice, said:

"The issue presented in the Pollock case was whether an income tax was direct within the meaning of the Constitution. The contentions which the case involved were thus presented. On the one hand it was argued that only capitation taxes and taxes on land as such were direct, within the meaning of the Constitution, considered as a matter of first impression, and that previous adjudications had construed the Constitution as having that import. On the other hand, it was asserted that, in principle, direct taxes, in the constitutional sense, embraced not only taxes on land and capitation taxes but all burdens laid on real or personal property because of its ownership, which were equivalent to a direct tax on such property, and it was affirmed that the previous adjudications of this court had settled nothing to the contrary.

"* * * Undoubtedly, in the course of the opinion in the Pollock case it was said that if a tax was direct within the constitutional sense the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement as to apportionment. But this language related to the subject-matter under consideration, and was but a statement that a tax which was in itself direct, *because imposed upon property solely because of its ownership*, could not be changed by affixing to it the qualifications of excise or duty. Here we are asked to decide that a tax is a direct tax on property which has at all times been considered as the antithesis of such a tax; that is, that it has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy.

"* * * Considering that the constitutional rule of apportionment had its origin in the purpose to prevent taxes on persons *solely because of their general ownership of property* from being levied by any other rule than that of apportionment, two things were decided by the court: First, that no sound distinction existed between a tax levied on a person solely because of his general ownership of real property, and the same tax imposed solely because of his general ownership of personal property. Secondly, that the tax on the income derived from such property, real or personal, was the legal equivalent of a direct tax on the property from which said income was derived, and hence must be apportioned. These conclusions, however, lend no support to the essential equivalents of a tax on property generally, real or personal, solely because of its ownership, must be converted into direct taxes, because it is conceived that it would be demonstrated by a close analysis that they could not be shifted from the person upon whom they first fall."

The same view was taken of the Pollock case in the subsequent case of Spreckels Sugar Refining Co. *v.* McClain, 192 U. S. 397.

The act now under consideration does not impose direct taxation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under article 1, section 8, clause 1, of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States.

Within the category of indirect taxation, as we shall have further occasion to show, is embraced a tax upon business done in a corporate capacity, which is the subject-matter of the tax imposed in the act under consideration. The Pollock case construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case the tax

is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed. The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way. It is unnecessary to enter upon an extended consideration of the technical meaning of the term "excise." It has been the subject-matter of considerable discussion — the terms duties, imposts, and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution. As Mr. Chief Justice Fuller said in the Pollock case, *supra:*

"Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue."

And in the same connection the chief justice, delivering the opinion of the court in Thomas *v.* United States, 192 U. S. 362, in speaking of the words duties, imposts, and excises, said:

"We think that they are used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like."

Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are "taxes laid upon the manufacture, sale, or consumption of commodities, within the country upon licenses to pursue certain occupations, and upon corporate privileges." Cooley Cons. Lim. (7th ed.) 680.

The tax under consideration, as we have construed the statute, may be described as an excise tax upon the particular privilege of doing business, in a corporate capacity; *i. e.*, with the advantages which arise from corporate or *quasi*-corporate organization; or, when applied to insurance companies, for doing the business of such companies. As was said in the Thomas case, 192 U. S., *supra*, the requirement to pay such taxes involves the exercise of privileges, and the element of absolute and unavoidable demand is lacking. If business is not done in the manner described in the statute no tax is payable.

If we are correct in holding that this is an excise tax, there is nothing in the Constitution requiring such taxes to be apportioned according to population. Pacific Ins. Co. *v.* Soule, 7 Wall. 433; Springer *v.* United States, 102 U. S. 586; Spreckels Sugar Refining Co., 192 U. S. 397.

Sec. 10. The Federal Corporation Tax Does Not Lack Uniformity Because It Contains Certain Exemptions as to the Kind of Corporations Which Are Subject to the Tax. — The points here referred to may be briefly enumerated as follows:

The tax only applies to incomes over and above five thousand dollars. On this subject the United States Supreme Court in Flint *v.* Stone Tracey & Co. (220 U. S. 107), spoke as follows:

It is again objected that incomes under $5,000 are exempted from the tax. It is only necessary in this connection to refer to Knowlton *v.* Moore, 178 U. S., *supra*, in which a tax upon inheritances in excess of $10,000 was sustained. In Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283, 293, a graded inheritance tax was sustained.

Neither does it lack uniformity because it exempts from the operation of the tax, labor, agricultural or horticultural organizations, fraternal beneficial societies, orders or associations, operating under the lodge system, and providing for the payment of life, sick, accident or other benefits, to the members of such societies, orders and associations and dependents upon such members, domestic building and loan associations organized explicitly for the mutual benefit of their members, together with the religious, charitable or educational organizations.

On this subject the United States Supreme Court in Flint *v.* Stone Tracey & Co. (220 U. S. 107), spoke as follows:

As to the objections that certain organizations, labor, agricultural, and horticultural, fraternal and benevolent societies, loan and building associations, and those for religious, charitable, or educational purposes, are excepted from the operation of the law, we find nothing in them to invalidate the tax. As we have had frequent occasion to say, the decisions of this court from an early date to the present time have emphasized the right of Congress to select the objects of excise taxation, and within this power to tax some and leave others untaxed must be included the right to make exemptions such as are found in this act.

Again, it is urged that Congress exceeded its power in permitting a deduction to be made of interest payments only in case of interest paid by banks and trust companies on deposits, and interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of the corporation or company. This provision may have been inserted with a view to prevent corporations from issuing a large amount of bonds in excess of the paid-up capital stock, and thereby distributing profits so as to avoid the tax. In any event, we see no reason why this method of ascertaining the deductions allowed should invalidate the act. Such details are not wholly arbitrary, and were deemed essential to practical operation. Courts cannot substitute their judgment for that of the legislature. In such matters a wide range of discretion is allowed.

The argument that different corporations are so differently circumstanced in different States, and the operation of the law so unequal as to destroy it, is so fully met in the opinion in Knowlton *v.* Moore, 178 U. S., *supra*, that it is only necessary to make reference thereto. For this purpose the law operates uniformly, geographically considered, throughout the United States, and in the same way wherever the subject-matter is found. A liquor tax is not rendered unlawful as a revenue measure because it may yield nothing in

those States which have promoted the liquor traffic. No more is the present law unconstitutional because of inequality of operation owing to different local conditions.

Nor is the special objection tenable, made in some of the cases, that the corporations act as trustees, guardians, etc., under the authority of the laws or courts of the State. Such trustees are not the agents of the State government in a sense which exempts them from taxation because executing the necessary governmental powers of the State. The trustees receive their compensation from the interests served, and not from the public revenues of the State.

Sec. 11. The Federal Corporation Tax Does Not Subject Corporations to Unreasonable Search or Seizures, or Require Officers Thereof to Incriminate Themselves. — The act contains no authorization which could be made the basis for a claim that it subjects the companies subject to the tax to unreasonable search or seizure, or makes it imperative upon officers thereof to incriminate themselves.

The United States Supreme Court, in Flint *v.* Stone Tracey & Co. (220 U. S. 107), on this subject, spoke as follows:

It is urged in a number of cases that in a certain feature of the statute there is a violation of the Fourth Amendment of the Constitution, protecting against unreasonable searches and seizures. This amendment was adopted to protect against abuses in judicial procedure, under the guise of law, which invade the privacy of persons in their homes, papers, and effects, and applies to criminal prosecutions and suits for penalties and forfeitures under the revenue laws. Boyd *v.* United States, 116 U. S. 632. It does not prevent the issue of search warrants for the seizure of gambling paraphernalia and other illegal matter. Adams *v.* New York, 192 U. S. 585. It does not prevent the issuing of process to require attendance and testimony of witnesses, the production of books and papers, etc. Interstate Commerce Commission *v.* Brimson, 154 U. S. 447; Interstate Commerce Commission *v.* Baird, 194 U. S. 25. Certainly the amendment was not intended to prevent ordinary procedure in use in many, perhaps most, of the States, of requiring tax returns to be made, often under oath. The objection in this connection applies when the substance of the argument is reached, to the sixth section of the act, which provides:

"Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such."

An amendment was made June 17, 1910, which reads as follows:

"For classifying, indexing, exhibiting, and properly caring for the returns of all corporations, required by section thirty eight of an act entitled 'An Act to provide revenue, equalize duties, encourage the industries of the United States, and for other purposes,' approved August fifth, nineteen hundred and

nine, including the employment in the District of Columbia, of such clerical and other personal services and for rent of such quarters as may be necessary, twenty-five thousand dollars. Provided, That any and all such returns shall be open to inspection only upon the order of the President under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President."

The contention is that the above section, as originally framed and as now amended, could have no legitimate connection with the collection of the tax, and in substance amounts to no more than an unlawful attempt to exhibit the private affairs of corporations to public or private inspection, without any substantial connection with or legitimate purpose to be subserved in the collection of the tax under the act now under consideration. But we cannot agree to this contention. The taxation, being as we have held, within the legitimate powers of Congress, it is for that body to determine what means are appropriate and adapted to the purposes of making the law effectual. In this connection, the often quoted declaration of Chief Justice Marshall, in McCulloch *v.* Maryland, 4 Wheat. 316, 421, is appropriate:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, and which are plainly adapted to that end, and which are not prohibited, but are consistent with the letter and spirit of the Constitution, are constitutional."

Congress may have deemed the public inspection of such returns a means of more properly securing the fulness and accuracy thereof. In many of the States laws are to be found making tax returns public documents and open to inspection.

We cannot say that this feature of the law does violence to the constitutional protection of the Fourth Amendment, and this is equally true of the Fifth Amendment, protecting persons against compulsory self incriminating testimony. No question under the latter amendment properly arises in these cases, and when circumstances are presented which invoke the protection of that amendment and raise questions involving rights thereby secured it will be time enough to decide them. And so of the argument that the penalties for the nonpayment of the taxes are so high as to violate the Constitution. No case is presented involving that question, and, moreover, the penalties are clearly a separate part of the act, and whether collectible or not may be determined in a case involving an attempt to enforce them. Wilcox *v.* Consolidated Gas Co., 212 U. S. 19, 53.

Sec. 12. The Tax May Be Collected in One Year Though It Is Measured by the Net Income of the Tax Paying Company During the Preceding Year. — The tax is not laid upon but is only measured by the income. Any excise tax however laid may be levied after part of the year during which the tax was operative has expired. See Stockdale *v.* Ins. Cos., 20 Wall. 323; R. R. Co. *v.* Rose, 95 U. S. 78; Patton *v.* Brady, 184 U. S. 608; Locke *v.* New Orleans, 4 Wall. 172.

CHAPTER II.

CONSTITUTIONALITY OF THE TAX.

Sec. 13. Constitutionality of the Federal Corporation Tax. — The decision of the Supreme Court of the United States in what are known as the federal corporation tax cases was rendered by the United States Supreme Court on the 13th day of March, 1911. The decision is entitled:

Stella P. Flint, as General Guardian of the property of Samuel N. Stone, Jr., a minor, *v.* Stone Tracy Co. *et al.*, 220 U. S. 107.

This case together with fourteen cases advanced for hearing with the case just referred to, are all governed and controlled by the decision in Flint *v.* Stone Tracey Company *et al.*, and were argued and submitted at the same time.

The decision of the court with the statement of facts upon which the decision was based is here reproduced in full:

Mr. Justice Day delivered the opinion of the court.

These cases involve the constitutional validity of section 38 of the Act of Congress approved August 5, 1909, known as "The Corporation Tax" law. (Stat. 1909, pp. 112–117.)

It is contended in the first place that this section of the act is unconstitutional, because it is a revenue measure, and originated in the senate in violation of section 7 of article 1 of the Constitution, providing that "all bills for the raising of revenue shall originate in the house of representatives, but the senate may propose or concur with amendments as on other bills." The history of the act is contained in the government's brief, and is accepted as correct, no objection being made to its accuracy.

This statement shows that the tariff bill, of which the section under consideration is a part, originated in the house of representatives and was there a general bill for the collection of revenue. As originally introduced it contained a plan of inheritance taxation. In the senate the proposed tax was removed from the bill, and the corporation tax, in a measure, substituted therefor. The bill having properly originated in the house, we perceive no reason in the constitutional provision relied upon why it may not be amended in the senate in the manner which it was in this case. The amendment was

germane to the subject-matter of the bill and not beyond the power of the senate to propose. In thus deciding we do not wish to be regarded as holding that the journals of the house and senate may be examined to invalidate an act which has been passed and signed by the presiding officers of the house and senate and approved by the President and duly deposited with the State department. Field *v.* Clark, 143 U. S. 649; Harwood *v.* Wentworth, 162 U. S. 547; Twin City Bank *v.* Nebeker, 167 U. S. 196.

In order to have in mind some of the more salient features of the statute with a view to its interpretation, a part of the first paragraph is here set out, as follows:

"Sec. 38. That every corporation, joint stock company or association organized for profit and having a capital stock represented by shares, and every insurance company now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association or insurance company equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations or insurance companies subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska and the District of Columbia, during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations or insurance companies subject to the tax hereby imposed."

A reading of this portion of the statute shows the purpose and design of Congress in its enactment and the subject-matter of its operation. It is at once apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares. Such joint stock companies, while differing somewhat from corporations, have many of their attributes and enjoy many of their privileges. To these are added insurance companies, and they, as corporations, joint stock companies or associations, must be such as are now or hereafter organized under the laws of the United States or of any State or Territory of the United States, or under the acts of Congress applicable to Alaska and the District of Columbia. Each and all of these, the statute declares, shall be subject to pay annually a special excise tax with respect to the carrying on and doing business by such corporation, joint stock company or association, or insurance company. The tax is to be equivalent to one per cent. of the entire net income over and above $5,000 received by such corporation or company *from all sources* during the year, excluding, however, amounts received by them as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by the statute. Similar companies organized under the laws of any foreign country and engaged in busi-

ness in any State or Territory of the United States, or in Alaska or the District of Columbia, are required to pay the tax upon the net income over and above $5,000 received by them from business transacted and capital invested within the United States, the Territories, Alaska, and the District of Columbia, during each year, with the like exclusion as to amounts received by them as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed.

While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, nevertheless the declaration of the lawmaking power is entitled to much weight, and in this statute the intention is expressly declared to impose a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or company. It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business and with respect to the carrying on thereof, in a sum equivalent to one per centum upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organizations of the character described. As the latter organizations share many benefits of corporate organization it may be described generally as a tax upon the doing of business in a corporate capacity. In the case of the insurance companies the tax is imposed upon the transaction of such business by companies organized under the laws of the United States or any State or Territory, as heretofore stated.

This tax, it is expressly stated, is to be equivalent to one per centum of the entire net income over and above $5,000 received from *all sources* during the year — this is the measure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source. This view of the measure of the tax is strengthened when we note that as to organizations under the laws of foreign countries the amount of net income over and above $5,000 includes that received from business transacted and capital invested in the United States, the Territories, Alaska, and the District of Columbia.

It is further strengthened when the subsequent sections are considered as to deductions in ascertaining net income and requiring returns from those subject to the act. Under the second paragraph the net income is to be ascertained by certain deductions from the gross amount of income received within the year "from all sources:" and the return to be made to the collector of internal revenue under the third section is required to show the gross amount

of the income received during the year "from all sources." The evident purpose is to secure a return of the entire income, with certain allowances and deductions which do not suggest a restriction to income derived from property actively engaged in the business. This interpretation of the act, as resting upon the doing of business, is sustained by the reasoning in Spreckels Sugar Refining Co. *v.* McClain, 192 U. S. 397, in which a special tax measured by the gross receipts of the business of refining oil and sugar was sustained as an excise in respect to the carrying on or doing of such business.

Having thus interpreted the statute in conformity, as we believe, with the intention of Congress in passing it, we proceed to consider whether, as thus construed, the statute is constitutional.

It is contended that it is not, certainly so far as the tax is measured by the income of bonds nontaxable under federal statutes, and municipal and State bonds beyond the federal power of taxation. And so of real and personal estates, because as to such estates the tax is direct, and required to be apportioned according to population among the States. It is insisted that such must be the holding unless this court is prepared to reverse the income tax cases decided under the Act of 1894. Pollock *v.* Farmers' Loan & Trust Co., 157 U. S. 429; s. c., 158 U. S. 601.

The applicable provisions of the Constitution of the United States in this connection are found in article 1, section 8, clause 1, and in article 1, section 2, clause 3, and article 1, section 9, clause 4. They are respectively:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers.

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

It was under the latter requirement as to apportionment of direct taxes according to population that this court in the Pollock case held the statute of 1894 to be unconstitutional. Upon the rehearing of the case Mr. Chief Justice Fuller, who spoke for the court, summarizing the effect of the decision, said:

"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such." 158 U. S. 635.

And as to excise taxes, the chief justice said:

"We do not mean to say that an act laying by apportionment a direct tax on all real estate or personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations." Page 637.

The Pollock case was before this court in Knowlton *v.* Moore, 178 U. S. 41. In that case this court sustained an excise tax upon the transmission of property by inheritance. It was contended there, as here, that the case was ruled by the Pollock case, and of that case this court, speaking by the present chief justice, said:

"The issue presented in the Pollock case was whether an income tax was direct within the meaning of the Constitution. The contentions which the case involved were thus presented. On the one hand, it was argued that only capitation taxes and taxes on land as such were direct, within the meaning of the Constitution, considered as a matter of first impression, and that previous adjudications had construed the Constitution as having that import. On the other hand, it was asserted that, in principle, direct taxes, in the constitutional sense, embraced not only taxes on land and capitation taxes, but all burdens laid on real or personal property because of its ownership, which were equivalent to a direct tax on such property, and it was affirmed that the previous adjudications of this court had settled nothing to the contrary.

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"Undoubtedly, in the course of the opinion in the Pollock case it was said that if a tax was direct within the constitutional sense the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement as to apportionment. But this language related to the subject-matter under consideration, and was but a statement that a tax which was in itself direct, because imposed upon property solely because of its ownership, could not be changed by affixing to it the qualifications of excise or duty. Here we are asked to decide that a tax is a direct tax on property which has at all times been considered as the antithesis of such a tax; that is, that it has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy.

* * * * * * *

"Considering that the constitutional rule of apportionment had its origin in the purpose to prevent taxes on persons solely because of their general ownership of property from being levied by any other rule than that of apportionment, two things were decided by the court: First, that no sound distinction existed between a tax levied on a person solely because of his general ownership of real property, and the same tax imposed solely because of his general ownership of personal property. Secondly, that the tax on the income derived from such property, real or personal, was the legal equivalent of a direct tax on the property from which said income was derived, and hence must be apportioned. These conclusions, however, lend no support to the contention that it was decided that duties, imposts and excises, which are not the essential equivalents of a tax on property generally, real or personal, solely because of its ownership, must be converted into direct taxes, because it is conceived that it would be demonstrated by a close analysis that they could not be shifted from the person upon whom they first fall."

The same view was taken of the Pollock case in the subsequent case of Spreckels Sugar Refining Co. *v.* McClain, 192 U. S. 397.

The act now under consideration does not impose direct taxation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under article 1, section 8, clause 1, of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States.

Within the category of indirect taxation, as we shall have further occasion to show, is embraced a tax upon business done in a corporate capacity, which is the subject-matter of the tax imposed in the act under consideration. The

Pollock case construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case the tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed. The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way.

It is unnecessary to enter upon an extended consideration of the technical meaning of the term "excise." It has been the subject-matter of considerable discussion — the terms duties, imposts, and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution. As Mr. Chief Justice Fuller said in the Pollock case, *supra:*

"Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' such a tax for more than one hundred pears of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue."

And in the same connection the chief justice, delivering the opinion of the court in Thomas *v.* United States, 192 U. S. 363, in speaking of the words duties, imposts, and excises, said:

"We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like."

Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are "taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges." Cooley, Cons. Lim. (7th ed.) 680.

The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity, *i. e.*, with the advantages which arise from corporate or *quasi*-corporate organization; or, when applied to insurance companies, for doing the business of such companies. As was said in the Thomas case, 192 U. S., *supra*, the requirement to pay such taxes involves the exercise of privileges, and the element of absolute and unavoidable demand is lacking. If business is not done in the manner described in the statute, no tax is payable.

If we are correct in holding that this is an excise tax, there is nothing in the Constitution requiring such taxes to be apportioned according to population. Pacific Ins. Co. *v.* Soule, 7 Wall. 433; Springer *v.* United States, 102 U. S. 586; Spreckels Sugar Refining Co., 192 U. S. 397.

It is next contended that the attempted taxation is void because it levies a tax upon the exclusive right of a State to grant corporate franchises, because it taxes franchises which are the creation of the State in its sovereign right and authority. This proposition is rested upon the implied limitation upon the powers of national and state governments to take action which encroaches upon or cripples the exercise of the exclusive power of sovereignty in the other. It has been held in a number of cases that the State cannot tax franchises

created by the United States or the agencies or corporations which are created for the purpose of carrying out governmental functions of the United States. McCulloch *v.* Maryland, 4 Wheat. 316; Osborn *v.* Bank, 9 Wheat. 738; Railroad Co. *v.* Peniston, 18 Wall. 5; California *v.* Central Pac. R. R. Co., 127 U. S. 1.

An examination of these cases will show that in each case where the tax was held invalid the decision rested upon the proposition that the corporation was created to carry into effect powers conferred upon the federal government in its sovereign capacity, and the attempted taxation was an interference with the effectual exercise of such powers.

In Osborn *v.* The Bank, *supra*, a leading case upon the subject, whilst it was held that the bank of the United States was not a private corporation, but a public one, created for national purposes, and therefore beyond the taxing power of the State, Chief Justice Marshall, in delivering the opinion of the court, conceded that if the corporation had been originated for the management of an individual concern, with private trade and profit for its great end and principal object, it might be taxed by the State. Said the chief justice:

"If these premises [that the corporation was one of private character] were true, the conclusion drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs would no more exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner."

The inquiry in this connection is: How far do the implied limitations upon the taxing power of the United States over objects which would otherwise be legitimate subjects of federal taxation, withdraw them from the reach of the federal government in raising revenue, because they are pursued under franchises which are the creation of the States?

In approaching this subject we must remember that enactments levying taxes, as other laws of the federal government when acting within constitutional authority, are the supreme law of the land. The Constitution contains only two limitations on the right of Congress to levy excise taxes; they must be levied for the public welfare and are required to be uniform throughout the United States. As Mr. Chief Justice Chase said, speaking for the court in License Tax Cases, 5 Wall. 462, 471: "Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited and thus only, it reaches every subject and may be exercised at discretion." The limitations to which the chief justice refers were the only ones imposed in the Constitution upon the taxing power.

In McCray *v.* United States, 195 U. S. 27, this court sustained a federal tax on oleomargarine, artificially colored, and held that while the Fifth and Tenth Amendments qualify, so far as applicable, all the provisions of the Constitution, nothing in those amendments operates to take away the power to tax conferred by the Constitution on the Congress. In that case it was contended that the subject taxed was within the exclusive domain of the States, and

that the real purpose of Congress was not to raise revenue, but to tax out of existence a substance not harmful of itself and one which might be lawfully manufactured and sold; but, the only constitutional limitation which this court conceded, in addition to the requirement of uniformity, and that for the sake of argument only so far as concerned the case then under consideration, was that Congress is restrained from arbitrary impositions or from exceeding its powers in seeking to effect unwarranted ends. The limitation of uniformity was deemed sufficient by those who framed and adopted the Constitution. The courts may not add others. Patton *v.* Brady, 184 U. S. 608, 622. And see United States *v.* Singer, 15 Wall. 111, 121; Nicol *v.* Ames, 173 U. S. 509, 515.

We must therefore enter upon the inquiry as to implied limitations upon the exercise of the federal authority to tax because of the sovereignty of the States over matters within their exclusive jurisdiction, having in view the nature and extent of the power specifically conferred upon Congress by the Constitution of the United States. We must remember, too, that the revenues of the United States must be obtained in the same terriory, from the same people, and excise taxes must be collected from the same activities, as are also reached by the States in order to support their local government.

While the tax in this case, as we have construed the statute, is imposed upon the exercise of the privilege of doing business in a corporate capacity, as such business is done under authority of State franchises, it becomes necessary to consider in this connection the right of the federal government to tax the activities of private corporations which arise from the exercise of franchises granted by the State in creating and conferring powers upon such corporations. We think it is the result of the cases heretofore decided in this court, that such business activities, though exercised because of State created franchises, are not beyond the taxing power of the United States. Taxes upon rights exercised under grants of State franchises were sustained by this court in Railroad Co. *v.* Collector, 100 U. S. 595; United States *v.* Erie R. R. Co., 106 U. S. 327; Spreckels Sugar Refining Co. *v.* McClain, 192 U. S. 397.

It is true that in those cases the question does not seem to have been directly made, but, in sustaining such taxation, the right of the federal government to reach such agencies was necessarily involved. The question was raised and decided in the case of Veazie Bank *v.* Fenno, 8 Wall. 533. In that well-known case a tax upon the notes of a State bank issued for circulation was sustained. Mr. Chief Justice Chase, in the course of the opinion, said:

"Is it, then, a tax on a franchise granted by a State, which Congress, upon any principle exempting the reserved powers of the States from impairment by taxation, must be held to have no authority to lay and collect?

"We do not say that there may not be such a tax. It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of States government, are not proper subjects of the taxing power of Congress. But it cannot be admitted that franchises granted by a State are necessarily exempt from taxation; for franchises are property, often very valuable and productive property; and when not conferred for the purpose of giving effect to some reserved power of a State, seem to be as properly objects of taxation as any other property.

"But in the case before us the object of taxation is not the franchise of the bank, but property created, or contracts made and issued under the franchise, or power to issue bank bills. A railroad company, in the exercise of its corporate franchises, issues freight receipts, bills of lading, and passenger tickets; and it cannot be doubted that the organization of railroads is quite as important to the State as the organization of banks. But it will hardly be questioned that these contracts of the company are objects of taxation within the powers of Congress, and not exempted by any relation to the State which granted the charter of the railroad. And it seems difficult to distinguish the taxation of notes issued for circulation from the taxation of these railroad contracts. Both descriptions of contracts are means of profit to the corporations which issue them; and both, as we think, may properly be made contributory to the public revenue." Pages 547, 548.

It is true that the decision in the Veazie Bank case was also placed, in a measure, upon the authority of the United States to control the circulating medium of the country, but the force of the reasoning, which we have quoted, has not been denied or departed from.

In Thomas *v.* United States, 192 U. S., *supra*, a federal tax on the transfer of corporate shares in State corporations was upheld as a tax upon business transacted in the exercise of privileges afforded by the State laws in respect to corporations.

In Nicol *v.* Ames, 173 U. S. 509, a federal tax was sustained upon the enjoyment of privileges afforded by a board of trade incorporated by the State of Illinois.

When the Constitution was framed the right to lay excise taxes was broadly conferred upon the Congress. At that time very few corporations existed. If the mere fact of State incorporation, extending now to nearly all branches of trade and industry, could withdraw the legitimate objects of federal taxation from the exercise of the power conferred, the result would be to exclude the national government from many objects upon which indirect taxes could be constitutionally imposed. Let it be supposed that a group of individuals, as partners, were carrying on a business upon which Congress concluded to lay an excise tax. If it be true that the forming of a State corporation would defeat this purpose, by taking the necessary steps required by the State law to create a corporation and carrying on the business under rights granted by a State statute, the federal tax would become invalid and that source of national revenue be destroyed, except as to the business in the hands of individuals or partnerships. It cannot be supposed that it was intended that it should be within the power of individuals acting under State authority to thus impair and limit the exertion of authority which may be essential to national existence.

In this connection South Carolina *v.* United States, 199 U. S. 437, is important. In that case it was held that the agents of the State government, carrying on the business of selling liquor under State authority, were liable to pay the internal revenue tax imposed by the federal government. In the opinion previous cases in this court were reviewed, and the rule to be deduced therefrom stated to be that the exemption of State agencies and instrumentalities from national taxation was limited to those of a strictly governmental character, and did not extend to those used by the State in carrying on business of a private character. 199 U. S. 461.

The cases unite in exempting from federal taxation the means and instrumentalities employed in carrying on the governmental operations of the State. The exercise of such rights as the establishment of a judiciary, the employment of officers to administer and execute the laws and similar governmental functions cannot be taxed by the federal government. The Collector *v.* Day, 11 Wall. 113; United States *v.* R. R. Co., 17 Wall. 322; Ambrosini *v.* United States, 187 U. S. 1.

But this limitation has never been extended to the exclusion of the activities of a merely private business from the federal taxing power, although the power to exercise them is derived from an act of incorporation by one of the States. We, therefore, reach the conclusion that the mere fact that the business taxed is done in pursuance of authority granted by a State in the creation of private corporations does not exempt it from the exercise of federal authority to levy excise taxes upon such privileges.

But, it is insisted, this taxation is so unequal and arbitrary in the fact that it taxes a business when carried on by a corporation and exempts a similar business when carried on by a partnership or private individual as to place it beyond the authority conferred upon Congress. As we have seen, the only limitation upon the authority conferred is uniformity in laying the tax, and uniformity does not require the equal application of the tax to all persons or corporations who may come within its operation, but is limited to geographical uniformity throughout the United States. This subject was fully discussed and set at rest in Knowlton *v.* Moore, 178 U. S., *supra*, and we can add nothing to the discussion contained in that case.

In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another. For examples of such taxation, see the following cases decided in this court, upholding the power:

Hylton *v.* United States, 3 Dall. 171 (a tax on carriages which the owner kept for private use); Nicol *v.* Ames, 173 U. S. 509 (a tax upon sales or exchanges of boards of trade); Knowlton *v.* Moore, 178 U. S. 41 (a tax on the transmission of property from the dead to the living); Treat *v.* White, 181 U. S. 264 (a tax on agreements to sell shares of stock, denominated "calls" by stockbrokers); Patton *v.* Brady, 184 U. S. 608 (a tax on tobacco manufactured for consumption, and imposed at a period intermediate the commencement of manufacture and the final consumption of the article); Cornell *v.* Coyne, 192 U. S. 418 (a tax on "filled cheese" manufactured expressly for export); McCray *v.* United States, 195 U. S. 27 (a tax on oleomargarine not artificially colored, a higher tax on oleomargarine artificially colored and no tax on butter artificially colored); Thomas *v.* United States, 192 U. S. 363 (a tax on sales of shares of stock in corporations); Pacific Insurance Co. *v.* Soule, 7 Wall. 433 (tax upon the amounts insured, renewed, or continued by insurance companies upon the gross amounts of premiums received and assessments made by them, and also upon dividends, undistributed sums, and incomes); Veazie Bank *v.* Fenno, 8 Wall. 533 (a tax of ten per centum on the amount of the notes paid out of any State bank, or State banking association); Scholey *v.* Rew, 23 Wall. 331 (a tax on devolutions of title to real estate); Spreckels *v.* Sugar Refining Co., 192 U. S. 397 (a tax on the gross

receipts of corporations and companies, in excess of $250,000, engaged in refining sugar or oil); Railroad Co. *v.* Collector, 100 U. S. 595 (a tax laid in terms upon the amounts paid by certain public service corporations as interest on their funded debt, or as dividends to their stockholders, and also on "all profits, incomes, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction." Held to be a tax upon the company's earnings and therefore essentially an excise upon the business of the corporations); Springer *v.* United States, 102 U. S. 586 (a duty provided by the internal revenue acts to be assessed, collected, and paid upon gains, profits, and incomes, held to be an excise or duty and not a direct tax).

Many instances might be given where this court has sustained the right of a State to select subjects of taxation, although as to them the Fourteenth Amendment imposes a limitation upon State legislatures, requiring that no person shall be denied the equal protection of the laws. See the following cases:

Beers *v.* Glynn, 211 U. S. 477 (a State tax on personalty or nonresident decedents who owned realty in the State); Hatch *v.* Reardon, 204 U. S. 152 (a State tax on the transfers of stock made within the State); Armour Packing Co. *v.* Lacy, 200 U. S. 226 (a State license tax on meat packing houses. A foreign corporation selling its products in the State, but whose packing establishments are not situated in the State, is not exempt from such license tax); Savannah, Thunderbolt & Isle of Hope Ry. *v.* Savannah, 198 U. S. 392 (a classification which distinguishes between an ordinary street railway and a steam railroad, making an extra charge for local deliveries of freight brought over its road from outside the city, held not to be such a classification as to make the tax void under the Fourteenth Amendment); Cook *v.* Marshall County, 196 U. S. 261 (State tax on cigarette dealers); Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283 (upholding the graded inheritance tax law of Illinois); Bell's Gap R. R. Co. *v.* Pennsylvania, 134 U. S. 232 (State tax upon the nominal face value of bonds, instead of their actual value, held a valid part of the State system of taxation).

In Bell's Gap R. R. Co. *v.* Pennsylvania, 134 U. S. 232, dealing with the Fourteenth Amendment, which in this respect imposes limitations only on State authority, this court said:

"The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or the people of the State in framing their Constitution."

It is insisted in some of the briefs assailing the validity of this tax that

these cases have been modified by Southern R. R. Co. v. Greene, 216 U. S. 400. In that case a corporation organized in a State, other than Alabama, came into that State in compliance with its laws, paid the license tax and property tax imposed upon other corporations doing business in the State, and acquired under direct sanction of the laws of the State a large amount of property therein, and, when it was attempted to subject it to further tax on the ground that it was for the privilege of doing business as a foreign corporation, when the same tax was not imposed upon State corporations doing precisely the same business, in the same way, it was held that the attempted taxation was merely arbitrary classification, and void under the Fourteenth Amendment. In that case the foreign corporation was doing business under the sanction of the State laws no less than the local corporation; it had acquired its property under sanction of those laws; it had paid all direct and indirect taxes levied against it, and there was no practical distinction between it and a State corporation doing the same business in the same way.

In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the Fourteenth Amendment were applicable to the present case, that there is no substantial difference between the carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, not the mere buying or selling or handling of goods which may be the same, whether done by corporations or individuals.

It is further contended that some of the corporations, notably insurance companies, have large investments in municipal bonds and other nontaxable securities, and in real estate and personal property not used in the business, that therefore the selection of the measure of the income from all sources is void, because it reaches property which is not the subject of taxation — upon the authority of the Pollock case, *supra*. But this argument confuses the measure of the tax upon the privilege, with direct taxation of the estate or thing taxed. In the Pollock case, as we have seen, the tax was held unconstitutional, because it was in effect a direct tax on the property solely because of its ownership.

Nor does the adoption of this measure of the amount of the tax do violence to the rule laid down in Galveston, Harrisburg & San Antonio Ry. Co. *v.* Texas, 210 U. S. 217, nor the Western Union Tel. Co. *v.* Kansas, 216 U. S. 1. In the Galveston case it was held that a tax imposed by the State of Texas,

equal to one per cent. upon the gross receipts "from every source whatever" of lines of railroad lying wholly within the State, was invalid as an attempt to tax gross receipts derived from the carriage of passengers and freight in interstate commerce, which in some instances was much the larger part of the gross receipts taxed. This court held that this act was an attempt to burden commerce among the States, and the fact that it was declared to be "equal to" one per cent. made no difference, as it was merely an effort to reach gross receipts by a tax not even disguised as an occupation tax, and in nowise helped by the words "equal to." In other words, the tax was held void, as its substance and manifest intent was to tax interstate commerce as such.

In the Western Union Telegraph cases the State undertook to levy a graded charter fee upon the entire capital stock of one hundred millions of dollars of the Western Union Telegraph Company, a foreign corporation, and engaged in commerce among the States, as a condition of doing local business within the State of Kansas. This court held, looking through forms and reaching the substance of the thing, that the tax thus imposed was in reality a tax upon the right to do interstate commerce within the State, and an undertaking to tax property beyond the limits of the State; that whatever the declared purpose, when reasonably interpreted, the necessary operation and effect of the act in question was to burden interstate commerce and to tax property beyond the jurisdiction of the State, and it was therefore invalid.

There is nothing in these cases contrary, as we shall have occasion to see, to the former rulings of this court which hold that where a tax is lawfully imposed upon the exercise of privileges within the taxing power of the State or nation, the measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable. The distinction lies between the attempt to tax the property as such and to measure a legitimate tax upon the privileges involved in the use of such property.

In Home Ins. Co. *v.* New York, 134 U. S. 594, a tax was sustained upon the right or privilege of the Home Insurance Company to be a corporation, and to do business within the State in a corporate capacity, the tax being measured by the extent of the dividends of the corporation in the current year upon the capital stock. Although a very large amount, nearly two of three millions of capital stock was invested in bonds of the United States, expressly exempted from taxation by a statute of the United States, the tax was sustained as a mode of measurement of a privilege tax which it was within the lawful authority of the State to impose. Mr. Justice Field, who delivered the opinion of the court, reviewed the previous cases in this court, holding that the State could not tax or burden the operation of the Constitution and of laws enacted by the Congress to carry into execution the powers vested in the general government. Yielding full assent to those cases, Mr. Justice Field said of the tax then under consideration: "It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United States composing a part of that stock. The statute designates it a tax upon the 'corporate franchise or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year." In that case, in the course of the opinion, previous cases of this court were cited with approval. Society for Savings *v.* Coite, 6 Wall. 594; Provident Institution *v.* Massachusetts, 6 Wall. 611.

In the Coite case a privilege tax upon the total amount of deposits in a savings bank was sustained, although $500,000 of the deposits had been invested in securities of the United States, and declared by Act of Congress to be exempt from taxation by State authority. In that case the court said: "Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of the State government. Authority to that effect resides in the State independently of the federal government, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in federal securities." In Provident Institution *v.* Massachusetts, *supra*, a like tax was sustained.

It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed. See in this connection Maine *v.* Grand Trunk Ry., 142 U. S. 217, as interpreted in Galveston, Harrisburg & San Antonio Ry. Co. *v.* Texas, 210 U. S. 217, 226.

It is contended that measurement of the tax by the net income of the corporation or company received by it from all sources is not only unequal, but so arbitrary and baseless as to fall outside of the authority of the taxing power. But is this so? Conceding the power of Congress to tax the business activities of private corporations, including, as in this case, the privilege of carrying on business in a corporate capacity, the tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations. Some corporations do a large business upon a small amount of capital; others with a small business may have a large capital. A tax upon the amount of business done might operate as unequally as a measure of excise as it is alleged the measure of income from all sources does. Nor can it be justly said that investments have no real relation to the business transacted by a corporation. The possession of large assets is a business advantage of great value; it may give credit which will result in more economical business methods; it may give a standing which shall facilitate purchases; it may enable the corporation to enlarge the field of its activities and in many ways give it business standing and prestige.

It is true that in the Spreckels Case, 192 U. S., *supra*, the excise tax, for the privilege of doing business, was based upon the business assets in use by the company, but this was because of the express terms of the statute which thus limited the measure of the excise. The statute now under consideration bears internal evidence that its draftsman had in mind language used in the opinion in the Spreckels case, and the measure of taxation, the income from all sources, was doubtless inserted to prevent the limitation of the measurement of the tax to the income from business assets alone. There is no rule which permits a court to say that the measure of a tax for the privilege of doing

business, where income from property is the basis, must be limited to that derived from property which may be strictly said to be actively used in the business. Departures from that rule sustained in this court are not wanting. In United States *v.* Singer, 15 Wall. 111, an excise tax was sustained upon the liquor business, which was fixed by the payment on an amount not less than eighty per cent. of the total capacity of the distillery. Whether such capacity was used in the business was a matter of indifference, and this court said of such a measure:

"Every one is advised in advance of the amount he will be required to pay if he enters into the business of distilling spirits, and every distiller must know the producing capacity of his distillery. If he fail under these circumstances to produce the amount for which by the law he will in any event be taxed if he undertakes to distill at all, he is not entitled to much consideration."

In Society for Savings *v.* Coite, 6 Wall., *supra*, and Provident Institution *v.* Massachusetts, 6 Wall., *supra*, as we have seen, the amount of excise was measured by the amount of bank deposits. It made no difference that the deposits were not used actively in the business.

In Hamilton Co. *v.* Massachusetts, 6 Wall. 632, the tax was measured by the excess of the market value of the corporation's capital stock above the value of its real estate and machinery, and in this connection see Home Ins. Co. *v.* New York, 134 U. S., *supra*, where the excise was computed upon the entire capital stock measured by the extent of the dividends thereon.

We must not forget that the right to select the measure and objects of taxation devolves upon the Congress and not upon the courts, and such selections are valid unless constitutional limitations are overstepped. "It is no part of the function of a court to inquire into the reasonableness of the excise, either as respects the amount or the property upon which it is imposed." Patton *v.* Brady, 184 U. S. 608; McCray *v.* United States, 195 U. S. 27, 58, and previous cases in this court there cited.

Nor is that line of cases applicable, such as Brown *v.* Maryland, 12 Wheat. 419, holding that a tax on the sales of an importer is a tax on the import, and Cook *v.* Pennsylvania, 97 U. S. 566, holding a tax on auctioneer's sales of goods in original packages a tax on imports. In these cases the tax was held invalid, as the State thereby taxed subjects of taxation within the exclusive power of Congress.

What we have said as to the power of Congress to lay this excise tax disposes of the contention that the act is void as lacking in due process of law.

It is urged that this power can be so exercised by Congress as to practically destroy the right of the States to create corporations, and for that reason it ought not to be sustained, and reference is made to the declaration of Chief Justice Marshall in McCulloch *v.* Maryland that the power to tax involves the power to destroy. This argument has not been infrequently addressed to this court with respect to the exercise of the powers of Congress. Of such contention this court said in Knowlton *v.* Moore, *supra:*

"This principle is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists. In other words, the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subjects which may be law-

fully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it had there would be an end of all taxation; that is to say, if a lawful tax can be defeated because the power which is manifested by its imposition may when further exercised be destructive, it would follow that every lawful tax would become unlawful, and therefore no taxation whatever could be levied."

In Veazie Bank *v.* Fenno, 8 Wall. 533, *supra*, speaking for the court, the chief justice said:

"It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is, therefore, beyond the constitutional power of Congress.

"The first answer to this is that the judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation, or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution."

To the same effect, McCray *v.* United States, 195 U. S. 27. In the latter case it was said:

"* * * no instance is afforded from the foundation of the government where an act, which was within a power conferred, was declared to be repugnant to the Constitution, because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust."

And in the same case this court said, after reviewing the previous cases in this court:

"Since, as pointed out in all the decisions referred to, the taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument, it must follow, if a tax be within the lawful power, the exertion of that power may be not judicially restrained because of the results to arise from its exercise."

The argument, at last, comes to this: That because of possible results, a power lawfully exercised may work disastrously, therefore the courts must interfere to prevent its exercise, because of the consequences feared. No such authority has ever been invested in any court. The remedy for such wrongs, if such in fact exist, is in the ability of the people to choose their own representatives, and not in the exertion of unwarranted powers by courts of justice.

It is especially objected that certain of the corporations whose stockholders challenge the validity of the tax, are so-called real estate companies, whose business is principally the holding and management of real estate. These cases are No. 415, Cedar Street Co. *v.* Park Realty Co.; No. 431, Percy H. Brundage *v.* Broadway Realty Co.; No. 443, Phillips *v.* Fifty Associates *et al.*; No. 446, Mitchell *v.* Clark Iron Co.; No. 412, William H. Miner *v.* Corn Exchange Bank *et al.*; and No. 457, Cook *et al. v.* Boston Wharf Co.

In No. 412, Miner *v.* Corn Exchange Bank *et al.*, the bank occupies a building in part and rents a large part to tenants.

Of the realty companies, the Park Realty Company was organized to "work, develop, sell, convey, mortgage, or otherwise dispose of real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, apartment houses, etc.; to make and carry out contracts in the manner specified concerning buildings * * * and generally to deal in, sell, lease, exchange, or otherwise deal with lands, buildings, and other property, real or personal," etc.

At the time the bill was filed the business of the company related to the Hotel Leonori, and the bill averred that it was engaged in no other business except the management and leasing of that hotel.

The Broadway Realty Company was formed for the purpose of owning, holding, and managing real estate. It owns an office building and certain securities. The office building is let to tenants, to whom light and heat are furnished, and for whom janitor service and similar service are performed.

The Fifty Associates are operating under a charter to own real estate with power to build, improve, alter, pull down, and rebuild, and to manage, exchange, and dispose of the same.

The Clark Iron Company was organized under the laws of Minnesota, owns and leases ore lands for the purpose of carrying on mining operations, and receives a royalty depending upon the quantity of ore mined.

The Boston Wharf Company is operating under a charter authorizing it to acquire lands and flats, with their privileges and appurtenances, and to lease, manage, and improve its property in whatever manner shall be deemed expedient by it, and to receive dockage and wharfage for vessels laid at its wharfs.

What we have said as to the character of the corporation tax as an excise disposes of the contention that it is direct, and therefore requiring apportionment by the Constitution. It remains to consider whether these corporations are engaged in business. "Business" is a very comprehensive term and embraces everything about which a person can be employed. Black's Law Dict. 158, *citing* People *v.* Commissioners of Taxes, 23 N. Y. 242, 244. "That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit." Bouvier's Law Dict., vol. 1, p. 273.

We think it is clear that corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute, and in the capacity necessary to make such organizations subject to the law.

Of the Motor Taximeter Cab Company case, No. 432, the company owns and leases taxicabs, and collects rents therefrom. We think it is also doing business within the meaning of the statute.

What we have already said disposes of the objections made in certain cases of life insurance and trust companies, and banks, as to income derived from United States, State, municipal, or other nontaxable bonds.

We come to the question, Are so-called public service corporations, such as the Coney Island and Brooklyn Railroad Company, in case No. 409, and the Interborough Rapid Transit Company, No. 442, exempted from the operation

of this statute? In the case of South Carolina *v.* United States, 199 U. S. 437, this court held that when a State, acting within its lawful authority, undertook to carry on the liquor business it did not withdraw the agencies of the State carrying on the traffic from the operation of the internal nevenue laws of the United States. If a State may not thus withdraw from the operation of a federal taxing law a subject-matter of such taxation, it is difficult to see how the incorporation of companies whose service, though of a public nature, is, nevertheless, with a view to private profit, can have the effect of denying the federal right to reach such properties and activities for the purposes of revenue.

It is no part of the essential governmental functions of a State to provide means of transportation, supply artificial light, water, and the like. These objects are often accomplished through the medium of private corporations, and, though the public may derive a benefit from such operations, the companies carrying on such enterprises are, nevertheless, private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred.

The true distinction is between the attempted taxation of those operations of the States essential to the execution of its governmental functions, and which the State can only do itself, and those activities which are of a private character. The former the United States may not interfere with by taxing the agencies of the State in carrying out its purposes; the latter, although regulated by the State, and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate federal taxation.

Applying this principle, we are of opinion that the so-called public service corporations, represented in the cases at bar, are not exempt from the tax in question. Railroad Co. *v.* Peniston, 18 Wall. 5, 33.

It is again objected that incomes under $5,000 are exempted from the tax. It is only necessary, in this connection, to refer to Knowlton *v.* Moore, 178 U. S., *supra*, in which a tax upon inheritances in excess of $10,000 was sustained. In Magoun *v.* Illinois Trust & Savings Bank, 170 U. S. 283, 293, a graded inheritance tax was sustained.

As to the objections that certain organizations, labor, agricultural and horticultural, fraternal and benevolent societies, loan and building associations, and those for religious, charitable, or educational purposes, are excepted from the operation of the law, we find nothing in them to invalidate the tax. As we have had frequent occasion to say, the decisions of this court from an early date to the present time have emphasized the right of Congress to select the objects of excise taxation, and within this power to tax some and leave others untaxed, must be included the right to make exemptions such as are found in this act.

Again, it is urged that Congress exceeded its power in permitting a deduction to be made of interest payments only in case of interest paid by banks and trust companies on deposits, and interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of the corporation or company. This provision may have been inserted with a view to prevent

corporations from issuing a large amount of bonds in excess of the paid-up capital stock, and thereby distributing profits so as to avoid the tax. In any event, we see no reason why this method of ascertaining the deductions allowed should invalidate the act. Such details are not wholly arbitrary, and were deemed essential to practical operation. Courts cannot substitute their judgment for that of the legislature. In such matters a wide range of discretion is allowed.

The argument that different corporations are so differently circumstanced in different States, and the operation of the law so unequal as to destroy it, is so fully met in the opinion in Knowlton *v.* Moore, 178 U. S., *supra*, that it is only necessary to make reference thereto. For this purpose the law operates uniformly, geographically considered, throughout the United States, and in the same way wherever the subject-matter is found. A liquor tax is not rendered unlawful as a revenue measure because it may yield nothing in those States which have prohibited the liquor traffic. No more is the present law unconstitutional because of inequality of operation owing to different local conditions.

Nor is the special objection tenable, made in some of the cases, that the corporations act as trustees, guardians, etc., under the authority of the laws or courts of the State. Such trustees are not the agents of the State government in a sense which exempts them from taxation because executing the necessary governmental powers of the State. The trustees receive their compensation from the interests served, and not from the public revenues of the State.

It is urged in a number of the cases that in a certain feature of the statute there is a violation of the Fourth Amendment of the Constitution, protecting against unreasonable searches and seizures. This amendment was adopted to protect against abuses in judicial procedure under the guise of law which invade the privacy of persons in their homes, papers, and effects, and applies to criminal prosecutions and suits for penalties and forfeitures under the revenue laws. Boyd *v.* United States, 116 U. S. 632. It does not prevent the issue of search warrants for the seizure of gambling paraphernalia and other illegal matter. Adams *v.* New York, 192 N. Y. 585. It does not prevent the issuing of process to require attendance and testimony of witnesses, the production of books and papers, etc. Interstate Commerce Commission *v.* Brimson, 154 U. S. 447; Interstate Commerce Commission *v.* Baird, 194 U. S. 25. Certainly the amendment was not intended to prevent the ordinary procedure in use in many, perhaps most, of the States of requiring tax returns to be made, often under oath. The objection in this connection applies, when the substance of the argument is reached, to the sixth section of the act, which provides:

"Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such."

An amendment was made June 17, 1910, which reads as follows:

"For classifying, indexing, exhibiting, and properly caring for the returns of all corporations, required by section thirty-eight of an act entitled 'An Act to provide revenue, equalize duties, encourage the industries of the United

States, and for other purposes,' approved August fifth, nineteen hundred and nine, including the employment in the District of Columbia, of such clerical and other personal services and for rent of such quarters as may be necessary, twenty-five thousand dollars: Provided, That any and all such returns shall be open to inspection only upon the order of the President under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President."

The contention is that the above section as originally framed and as now amended could have no legitimate connection with the collection of the tax, and in substance amounts to no more than an unlawful attempt to exhibit the private affairs of corporations to public or private inspection, without any substantial connection with or legitimate purpose to be subserved in the collection of the tax under the act now under consideration. But we cannot agree to this contention. The taxation being, as we have held, within the legitimate powers of Congress, it is for that body to determine what means are appropriate and adapted to the purposes of making the law effectual. In this connection the often quoted declaration of Chief Justice Marshall, in McCulloch *v.* Maryland, 4 Wheat. 316, 421, is appropriate: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, and which are plainly adapted to that end, and which are not prohibited, but are consistent with the letter and spirit of the Constitution, are constitutional."

Congress may have deemed the public inspection of such returns a means of more properly securing the fulness and accuracy thereof. In many of the States laws are to be found making tax returns public documents, and open to inspection.

In Connecticut, the requirement is that the tax lists of the assessors shall be abstracted and lodged in the town clerk's office "for public inspection." R. S., Conn., § 2310. In New York, notices of the completion of the assessment rolls must be conspicuously posted in three or more public places, and a copy left in a specified place, "where it may be seen and examined by any person until the third Tuesday of August next following." Consol. Laws of N. Y., vol. 5, p. 5859; Laws N. Y., 1909, c. 62, § 36. In Maryland, a record of property assessed is required to be kept, and the valuation thereof with alphabetical list of owners recorded in a book, "which any person may inspect without fee or reward." Pub. Laws Md., vol. 2, p. 1804, § 23. In Pennsylvania, it is provided that from the time of publishing the assessor's returns until the day appointed for finally determining whether the assessor's valuations are too low, "any taxable inhabitant of the county shall have the right to examine the said return in the commissioner's office." Pepper & Lewis' Dig. Laws Pa., vol. 2, p. 4591, § 357. In New Hampshire, the list of taxes assessed are required to be kept in a book, and also left with the town clerk, and such records "shall be open to the inspection of all persons." Pub. Stat. N. H., 1901, p. 214, § 5.

We cannot say that this feature of the law does violence to the constitutional protection of the Fourth Amendment, and, this is equally true of the Fifth Amendment, protecting persons against compulsory self-incriminating testimony. No question under the latter amendment properly arises in these cases, and when circumstances are presented which invoke the protection of

that amendment and raise questions involving rights thereby secured it will be time enough to decide them. And so of the argument that the penalties for the nonpayment of the taxes are so high as to violate the Constitution. No case is presented involving that question, and, moreover, the penalties are clearly a separate part of the act, and whether collectible or not may be determined in a case involving an attempt to enforce them. Wilcox *v.* Consolidated Gas Co., 212 U. S. 19, 53.

It has been suggested that there is a lack of power to tax foreign corporations, doing local business in a State, in the manner proposed in this act, and that the tax upon such corporations, being unconstitutional, works such inequality against domestic corporations as to invalidate the law. It is sufficient to say of this that no such case is presented in the record. Southern Ry. Co. *v.* King, 217 U. S. 525. This is equally true as to the alleged invalidity of the act as a tax on exports, which is beyond the power of Congress. No such case is presented in those now before the court.

We have noticed such objections as are made to the constitutionality of this law as it is deemed necessary to consider. Finding the statute to be within the constitutional power of the Congress, it follows that the judgments in the several cases must be affirmed.

Affirmed.

CHAPTER III.

CONSTRUCTION AND INTERPRETATION OF THE ACT.

Sec. 14. Construction and Interpretation of the Act.— Rules therefor. Matters of construction and interpretation are of the highest import in the preparation of a treatise on the Federal Corporation Tax Enactment. For the benefit of those members of the bench and bar who may be called upon to either construe or interpret or assist in the construction and interpretation of the various provisions of the federal corporation tax, certain pertinent rules of statutory construction and interpretation are herewith submitted:

Sec. 15. Rules for the Construction and Interpretation of the Federal Corporation Tax Act.—

1. *Expressio unius est exclusio alterius* is an universal maxim in the construction of statutes. U. S. *v.* Arredondo *et al.*, 6 Peters 691, 8 L. E. 547.

2. The elementary rule is that every reasonable construction must be resorted to in order to save a statute from unconstitutionality. Hooper *v.* California, 155 U. S. 648, 15 Sup. Ct. Rep. 207, 39 L. E. 297.

3. Where the language of an act will bear two interpretations equally obvious, that one which is clearly in accordance with the provisions of the Constitution is to be preferred. Knights Templar & M. L. Ind. Co. *v.* Jarman, 187 U. S. 197, 23 Sup. Ct. Rep. 108, 47 L. E. 139.

4. Every act of Congress is to be given effect if possible *ut res magis valeat quam pereat.* Unity *v.* Burragem, 103 U. S. 447, 26 L. E. 405.

5. General language used in a statute should receive such a limited construction as will accord with the legislative intention

as gathered from the provisions of the whole act. McKee *v.* United States, 164 U. S. 287, 17 Sup. Ct. Rep. 92, 41 L. E. 437.

6. Whenever any words of the statute are doubtful or obscure, the intention of the legislature is to be resorted to in order to find the meaning of the words. U. S. *v.* Freeman, 3 How. 556, 11 L. E. 724.

7. The general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used; and that language is always controlling unless there are cogent reasons for believing that the language does not fully and accurately disclose the intent. U. S. *v.* Goldenberg, 168 U. S. 95, 18 Sup. Ct. Rep. 3, 42 L. E. 394.

8. Where a statutory provision admits of more than one construction, that one will be preferred which best serves to carry out the purposes of the act. Bernier *v.* Bernier, 147 U. S. 242, 13 Sup. Ct. Rep. 437, 37 L. E. 152.

9. A law is the best expositor of itself, and every part of an act is to be taken into view for the purpose of discovering the mind of the legislature. Pennington *v.* Coxe, 2 Cranch 33, 2 L. E. 199.

10. Statutes should be interpreted according to the intent and meaning of the legislature. New Lamp Chimney Co. *v.* Ansonia Brass & Copper Co., 91 U. S. 656, 23 L. E. 336.

11. The meaning of the legislature may be extended beyond the precise words used in the law from the reason or motive upon which the legislature proceeded from the end in view of the purpose which was desired; the limitation of the rule being, that to extend the meaning to any case it must be shown to come within the same reason upon which the lawmakers proceeded, and not merely a like reason. U. S. *v.* Freeman, 3 How. 556, 11 Sup. Ct. 724.

12. The operation of a statute may be restrained within narrower limits than its words import where the court is satisfied that the literal meaning of its language would extend to cases which the legislature never designed to include in it. Brewer *v.* Blougher *et al.*, 14 Peters 178, 10 L. E. 408.

13. The rule is that a statute should be so construed that if possible, no clause, sentence or word should be superfluous, void or

insignificant. Montclair Township *v.* Ramsdell, 107 U. S. 147, 2 U. S. Sup. Ct. Rep. 391, 27 L. E. 431.

14. Effect should be given to all the words of the statute where that is possible without conflict. Wilmot *v.* Mudge, 103 U. S. 217, 26 L. E. 536.

15. All general terms in a statute should be limited in their application so as not to lead to injustice, oppression or any unconstitutional operation, if that be possible. Carlisle *v.* U. S., 16 Wall. 147, 21 L. E. 426.

16. All laws should receive a sensible construction. General terms should be so limited in their operation as not to lead to injustice, oppression or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter. U. S. *v.* Kirby, 7 Wall. 482, 19 L. E. 278.

17. In construing a statute general expressions will not be restrained by particular words where the distinct import of a sentence describing an entire class would thereby be useless. Adams *v.* Woods, 2 Cranch 336, 2 L. E. 297.

18. Where the language of a statute is clear, it is not for the court to say that it shall be so construed as to include cases, because no good reason can be assigned why such cases should be excluded from its provision. Denn *v.* Reid, 10 Peters 524, 9 L. E. 519.

19. Revenue statutes are to be construed liberally to carry out the purposes of their enactment. U. S. *v.* Hodson, 10 Wall. 395, 19 L. E. 937; Smythe *v.* Fisk, 23 Wall. 374, 23 L. E. 47.

20. An exemption from taxation must be clearly defined and founded upon clear language without doubt or ambiguity. Bank of Commerce *v.* Tennessee, 161 U. S. 134, 16 Sup. Ct. Rep. 456, 50 L. E. 645.

21. The taxing power of the State is never to be presumed to be relinquished and it exists unless the intention to relinquish is declared in clear and unambiguous terms which will admit of no other reasonable construction. S. W. R. C. Co. *v.* Wright, 116 U. S. 231, 6 Sup. Ct. Rep. 375, 29 L. E. 627.

22. Exemption from taxation is not favored by law and will

not be sustained unless such clearly appeared to have been the intent of the legislature; and every reasonable doubt should be resolved in favor of the taxing power. Y. & M. Ry. Co. *v.* Adams, 180 U. S. 1.

23. Penal provision of revenue statutes are not to be strictly construed. Smythe *v.* Fiske, 23 Wall. 374, 23 L. E. 47.

24. The meaning of general words in a statute must be restricted whenever it is found necessary to do so in order to carry out the legislative intention. Reiche *v.* Smythe, 13 Wall. 162, 20 L. E. 566.

25. A statute is to be interpreted according to the intent of the legislature apparent upon its face; and every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature. U. S. *v.* Freeman, 3 How. 556, 11 L. E. 724.

26. To render the title of an act of any avail in its construction, the language of the act must be doubtful or ambiguous and the ambiguity must be in the context and not in the title. U. S. *v.* O. & C. Ry. Co., 164, U. S. 526, 17 Sup. Ct. Rep. 165, 41 L. E. 541. The heading to a section of a statute is proper to be considered in interpreting the statute when an ambiguity exists and a literal interpretation will work out wrong or injury. Knowlton *v.* Moore, 17 U. S. 41, 20 Sup. Ct. Rep. 747, 44 L. E. 969.

27. The rules of construction belonging to the English common law are adopted and adhered to by the federal courts in determining the meaning of the federal statutes. Charles River Bridge *v.* Warren Bridge, 11 Peters 420, 9 L. E. 773.

28. Statutes should be construed so as not to give effect to all the words used in their ordinary sense; but also to eviscerate, if possible, their true spirit and intent from all the connected circumstances, attendant or subsequent as well as preceding. Lawrence *v.* Allen, 7 How. 785.

29. In construing a statute every clause should be expounded by reference to every other, and if possible, every clause and provision should be given and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another. The most general and absolute terms of one section may

be qualified and limited by the conditions and exceptions contained in another, so that all may stand together. Peck *v.* Jewess, 7 How. 612, 12 L. E. 841.

30. The spirit as well as the letter of a statute must be respected; and where the whole context of the law demonstrates the particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid the intent. Dorousseau *v.* U. S., 6 Cranch 307, 3 L. E. 232.

31. Where exceptions are provided in a general statute, it excludes all others than those expressed, and the courts are not at liberty to engraft upon such statute other exceptions than those expressed. Kendall *v.* U. S., 107 U. S. 123, 2 Sup. Ct. Rep. 277, 27 L. E. 437.

32. The statute may define the purpose of an enactment as well by using a term of known and determined meaning as by expressed enumeration of all the particulars including that term. U. S. *v.* Smith, 5 Wheat. 153, 5 L. E. 57.

33. The popular or current import of words furnish the general rule for the interpretation of public laws as well as of private and business transactions. Maillard *v.* Lawrence, 16 How. 251, 14 L. E. 925.

34. Where words in a statute have acquired a well-understood meaning through judicial interpretation, it is to be presumed that they were used in that sense in a subsequent statute on the same subject, unless the contrary appears. U. S. *v.* Mooney, 116 U. S. 106, 6 Sup. Ct. Rep. 304, 29 L. E. 550.

35. It is not competent to reject or disregard a material part of an Act of Congress unless it be so clearly repugnant to the residue of the act that the whole cannot stand together. Rice *v.* Minn. & N. W. R. R. Co., 1 Black 358, 17 L. E. 147.

36. Where a provision is left out of a statute either by design or mistake of Congress, the courts have no power to supply it. To do so would be to legislate and not to construe. Hobbs *v.* McLean, 117 U. S. 567, 6 Sup. Ct. Rep. 870, 29 L. E. 940.

37. The statute should be read according to the natural and obvious import of its language, without resort to settled and forced construction for the purpose of either limiting or extending its operation; and when the language is plain, words or phrases

should not be inserted so as to incorporate in the statute a new and distinct provision. U. S. *v.* Temple, 105 U. S. 97, 26 L. E. 967.

38. If an interpretation of any part would operate unjustly or absurdly or contrary to the meaning of the act, it should be rejected. The construction must be such that the whole can stand if possible. Heydenfeldt *v.* Daney Gold & Sil. Min. Co., 13 U. S. 634, 23 L. W. 995.

39. When a statute limits a thing to be done in a particular mode, it includes a negative of any other mode. R. & G. R. Co. *v.* Reid, 13 Wall. 269, 20 L. E. 570; Stephen *v.* Smith, 10 Wall. 321, 19 L. E. 933.

40. In all cases where the clauses of an Act of Congress are ambiguous or doubtful, it is admissible for purposes of interpretation and construction to give great deference if not controlling effect to the interpretation given to such ambiguous language found in the act as was given to it by that department of the national government to whom the duty of enforcing the act is given. Peabody *v.* Daughlin, 16 Wall. 240, 21 L. E. 311; U. S. *v.* Tanner, 147 U. S. 661, 13 Sup. Ct. Rep. 436, 37 L. E. 321; Robinson *v.* Davoning, 127 U. S. 607, 8 Sup. Ct. Rep. 1328, 32 L. E. 269; Hahn *v.* U. S., 107 U. S. 402, 2 Sup. Ct. Rep. 494, 27 L. E. 527; Vissell *v.* Penrose, 8 How. 317, 12 L. E. 1095; St. Paul M. & M. Ry. Co. *v.* Fels, 137 U. S. 528, 11 Sup. Ct. Rep. 168, 34 L. E. 767; U. S. *v.* Dickson, 15 Peters 141, 10 L. E. 689.

41. While it is the duty of the courts to ascertain the meaning from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so, in order to carry out the legislative intent. U. S. *v.* Freight Assn., 166 U. S. 290.

42. To understand the true meaning of a clause, it is necessary to observe what the subject was in regard to which Congress attempted to legislate. Market Co. *v.* Hoffman, 101 U. S. 112.

43. The rule that every clause in a statute should have effect and one portion should not be placed in antagonism to another, is well settled. Petro *v.* Commercial Bank, 142 U. S. 544; Warren *v.* U. S., 168 Fed. 682.

44. It is a general rule in construing statutes that effect must be given to all their provisions if such construction is consistent

with the general purposes of the act and the provisions are not necessarily conflicting. All acts of the legislature should be so construed if practicable that one section will not defeat or destroy another, but explain and support it. When a provision admits of more than one construction, that one will be adopted which best serves to carry out the purposes of the act. Bernier *v.* Bernier, 147 U. S. 242, 37 L. E. 152.

45. It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may, any construction which implies that the legislature was ignorant of the language it employed. Inhabitants of Montclair *v.* Ramsdell, 107 U. S. 431, 27 L. E. 431.

46. Statutes must be interpreted according to the intent and meaning of the legislature; and that intention must, if practicable, be collected from the words of the act itself; or, if the language is ambiguous, it may be collected from other acts *in pari materia,* in connection with the words, and sometimes from the cause or necessity of the statute; but where the language of the act is unambiguous and explicit, courts are bound to seek for the intention of the legislature in the words of the act itself, and they are not at liberty to suppose that the legislature intended anything different from what their language imports. New Lamp Chimney Co. *v.* A. B. & C. Co., 91 U. S. 256.

47. Words and phrases are often found in different provisions of the same statute, which, if taken literally, without any qualification, would be inconsistent and sometimes repugnant, when by a reasonable interpretation — as by qualifying both, or by restricting one and giving to the other a literal construction — all become harmonious, and the whole difficulty disappears; and in such a case the rule is, that repugnancy should, if practicable, be avoided; and that, if the natural import of the words contained in the respective provisions tends to establish such a result, tho case is one where a resort may be had to construction for the purpose of reconciling the inconsistency, unless it appears that the difficulty can be overcome without doing violence to the language of the lawmaker." New Lamp Chimney *v.* Ansonia Brass & Copper Co., 91 U. S. 256, 27 L. E. 336.

48. The correct rule of interpretation is, that if divers statutes

relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law. Dough. 30, 2 Term Rep. 387, 586, 4 Maule & Selw. 210. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute (Lord Raym. 1028); and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. Morris *v.* Mellin, 6 Barn. & Cress. 454, 7 Barn. & Cress. 99. Wherever any words of a statute are doubtful or obscure, the intention of the legislature is to be resorted to, in order to find the meaning of the words. Wimbish *v.* Tailbois, Plowd. 57. A thing which is within the intention of the makers of the statute, is as much within the statute as if it were within the letter. Zouch *v.* Stowell, Plowd. 366; U. S. *v.* Freeman, 3 How. U. S. 556, 11 L. E. 724.

49. It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute and the subject-matter to which it relates; to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never designed within it. McKee *v.* United States, 164 U. S. 287, 41 L. E. 437.

CHAPTER IV.

SCOPE AND INTENT OF THE ACT.

Sec. 16. General Discussion of the Act With Reference to the Companies Affected Thereby. — At the very commencement of the act (section 1, lines 1–10) is found an enumeration of the several classes of companies upon which the act is to operate in the form of being subject to the payment of the excise tax therein provided. The portion of the act here referred to is as follows (section 1, lines 1–37):

> Every corporation, joint stock company or association organized for profit, having a capital stock represented by shares, and every insurance company now or hereafter organized under the laws of the United States, or of any State or Territory of the United States, or under the Acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country, and engaged in business in any State or Territory of the United States, or in Alaska, or in the District of Columbia, shall be subject to pay annually a special excise tax, — provided, however, that nothing in this section contained shall apply to labor, agricultural, or horticultural organizations or to fraternal beneficial societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, and associations and dependents of such members, nor to domestic building and loan associations organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Treasury regulations (T. D. 1510, December 3, 1909, see Appendix C.) define very clearly the class of corporations which are subject to the operation of the Federal Corporation Tax Law. In the regulation here referred to is found the following language:

> The attention of collectors and others is especially called to the fact that the Federal Corporation Tax applies to all corporations, joint stock companies, or associations, or insurance companies described therein, except those

specifically exempted without reference to the kind of business carried on. For statistical purposes, all such corporations, joint stock companies, and associations will be classified as follows:

"Class A. Financial and Commercial. — Including banks, banking associations, trust companies, guaranty and surety companies, title insurance companies, building associations (if for profit), and insurance companies, not specifically exempt.

"Class B. Public Service. — Such as railroads, steamboat, ferryboat, and stage line companies; pipe line, gas, and electric light companies, express, transportation, and storage companies; telegraph and telephone companies.

"Class C. Industrial and Manufacturing. — Such as mining, lumber, and coke companies; rolling mills; foundry and machine shops; saw mills; flour, woolen, cotton, and other mills; manufacturers of cars, automobiles, elevators, agricultural implements and all articles manufactured wholly or partly or in part from metal, wood, or other material; manufacturers or refiners of sugar, molasses, sirups, or other products; ice and refrigerating companies; slaughter houses, tannery, packing, or canning companies, etc.

"Class D. Mercantile. — Including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares, and merchandise.

"Class E. Miscellaneous. — Such as architects, contractors, hotel, theater, or other companies or associations, not otherwise classed."

National banks do not come within any of the exemptions named in the act (T. D. 1606, March 29, 1910, see Appendix K.).

In order to clearly grasp the scope and content of the act under discussion, it will now be necessary to define some of the terms used in that portion of the Federal Corporation Tax Act above set forth.

Sec. 17. Definition of a Corporation. — A corporation is a product of the expression of the sovereign political power of the State in the formation of the creation of a juristic person possessing such limited powers as may be granted to it by the legislative branch of our state or national governments. Under the terms of the act itself in order to be subject to the operation thereof, the corporation must be organized for profit, and have a capital stock represented by shares.

Sec. 18. Definition of Joint Stock Companies. — A joint stock company is a *quasi*-private corporation, wherein a number of individuals have united for purposes of common profit by con-

tributing to a common capital divided into shares, all of which are alienable at the option of the owner.

Commenting on the character of joint stock companies, the New York Supreme Court (Appellate Division, Second Department) in Lane *v.* Albertson, 78 App. Div. 607, 113 St. Rep. 947, 79 N. Y. Supp. 947, spoke as follows:

> The principal difference between a copartnership and a joint stock corporation is that there is in the latter as a rule no *delectus personarum*, and the transfer of the shares or the death of a member does not dissolve it. In People *ex rel.* Winchester *v.* Coleman, 133 N. Y. 279, Finch, J., says: "The People *ex rel.* Platt *v.* Wemple, 117 N. Y. 136, shows very forcibly how almost the full measure of corporate attributes has, by legislative enactment, been bestowed upon joint stock associations 'until the difference, if there be one, is obscure, elusive, and difficult to see and describe,' and proceeds to point out that the essential difference lies in the fact that a corporation drowns the individual rights, while the association leaves the individual rights unimpaired, in that the common-law liability for debts remains unchanged and unimpaired. In the case referred to (People *ex rel.* Platt *v.* Wemple), the court, per Danforth, J., say: 'Nor is the principal question altogether new. In Waterbury *v.* Merchants Union Express Co., 50 Barb. 158, the nature and legal character of the defendant, a joint stock association, created in like manner with the one before us, was held to have all the attributes of a corporation, and all its incidents except a common seal. The statutes from 1849 to 1867 were examined and held to confer the qualities which distinguish a comporation from a partnership, and to establish the relations of a member of the association as those of a stockholder in a corporation, and not those of an individual in a partnership, and that in controversies affecting them the analogies afforded by laws and jurisprudence in the case of corporations should be followed, and not those derived from a simple partnership.'" And in the Waterbury case, *supra*, the court say: "Their property or capital is represented in shares and certificates of stock differing in no respect from shares and stock certificates in corporations. * * * It may very well be that in the case of actual insolvency the shareholder, in view of his contingent liability, should have a quicker remedy to wind up and close the concern than the statute laws of this State allow in the case of corporations other than those organized for banking purposes. Be this as it may, it is nevertheless true that the situation and relations of a shareholder in one of these associations are in other respects alike and very exactly like those of a stockholder in a corporation."

In Elliott *v.* Freeman *et al.*, 220 U. S. 178, the court in construing the federal corporation tax spoke as follows:

> Under the terms of the Corporation Act corporations and joint stock associations must be such as are now or hereafter organized under the laws of the United States, or of any State or Territory of the United States, or under the Acts of Congress applicable to Alaska or the District of Columbia.

* * * As we have construed the Corporation Tax Act in the previous case, Flint *v.* Stone Tracy Co., *ante*, the tax is imposed upon doing business in a corporate or *quasi*-corporate capacity; that is with the facility or advantage of corporate organization.

It was the purpose of the act to treat corporations and joint stock companies similarly organized in the same way and assess them upon the facility in doing business which is substantially the same in both forms of organization. Joint stock companies are not infrequently organized under the statute laws of a State, deriving therefrom, in a large measure, the characteristics of a corporation.

The language of the act * * * imports an organization deriving power from statutory enactment. The statute does not say under the laws of the United States, or a State, or lawful in the United States, or in any State, but is made applicable to such as are organized under the laws of the United States, etc. The description of the corporation or joint stock association as one organized under the laws of a State at once suggests that they are such as are the creation of statutory law, from which they derive their powers and are qualified to carry on their operations.

* * * The difference between joint stock associations at common law and those organized under statutes are well recognized. Cook on Corporations, § 505.

There is an essential difference between a joint stock company as it exists at common law and a joint stock company having extensive statutory powers conferred upon it by the State within which it is organized. The latter kind of joint stock company is found in England and in the State of New York. To such an extent have these statutory powers been conferred on joint stock companies that the only substantial difference between them and corporations is that the members are not exempt from liability as partners for the debts of the company.

Sec. 19. Definition of Association. — "Association" is a generic term and may indifferently comprehend a voluntary confederacy which is a partnership dissoluble by the persons who formed it or a corporation confederacy, deriving its existence from a statute, and dissoluble only by law. Thomas *v.* Dakin, 22 Wend. N. Y. 9, 104.

In the words of the United States Supreme Court (U. S. *v.* Trinidad Coal Coking Co., 137 U. S. 161, 11 Sup. Ct. 57, 34 L. E. 640):

The words "association of persons" are often not inaptly employed to describe a corporation. An incorporated company is an association of individuals acting as a single person, and by their corporate name. As this court has said, private corporations are but associations of individuals united for some common purpose and permitted by law to use a common seal, and to change its members without a dissolution of the association.

Undoubtedly the meaning of the word "association," as here used in the Corporation Tax Act is to be found by application of the *ejusdem generis* rule, that is, it was employed to include any and all kinds of organizations of a character analagous to corporations and joint stock companies, provided only that such associations were organized for profit and had a capital stock represented by shares. In other words, it is plain, that the word "associations" here would include all unincorporated bodies organized for profit and having a capital stock represented by shares. (See Nat. Bankruptcy Act of 1898, sec. 4, subdiv. b.) It is quite likely that the phraseology here used was taken from the Franchise Tax Act of the State of New York (see Session Laws of New York, 1880, ch. 542) which was entitled "An Act to provide for raising taxes for the use of the State upon certain corporations, joint stock companies and associations."

The act here referred to was held applicable by the New York Court of Appeals to any combination of individuals entering into an agreement to carry on a business for profit upon terms which embody therein, as rules and regulations of such business, the enabling provisions of any State statute governing such association. (See People *ex rel.* Platt *v.* Wemple, 117 N. Y. 136; see also Waterbury *v.* Merchants Union Express Co., 50 Barb. 158; Westcott *v.* Fargo, 6 Lansing 319; *Id.*, 61 N. Y. 542.)

In determining what associations come within the purview of the Corporation Federal Tax Law the opinion of the Attorney-General of the United States, rendered February 14, 1910 (see Appendix EE.), is exceedingly helpful. This opinion reads as follows, to wit:

DEPARTMENT OF JUSTICE,
February 14, 1910.

SIR: — I have the honor to acknowledge receipt of your communications of January 22 and February 4, 1910, in which you ask my opinion with reference to whether or not certain business concerns fall within the provisions of section 38 of the Act of August 5, 1910 (36 Stat. 112), which provides for an excise tax "with respect to the carrying on or doing business" by corporations, joint stock companies, and associations; and in my reply I will consider separately the several classes of concerns to which you refer, with the exception of certain realty associations to be dealt with in a separate opinion.

1. Partnership associations, organized under the laws of the State of Pennsylvania.

By reference to the Pennsylvania statutes, I find that the material provisions of the law under which such associations are organized are as follows: The association is formed by three or more persons subscribing and contributing capital thereto, which alone shall be liable for the debts of the association, and such persons sign and acknowledge a statement in writing, which contains the names of the parties composing the association, the amount of capital subscribed by each, the total amount of capital, and when and how the same is to be paid, the character of the business to be conducted, and location of the same, the name of the association, with the word "Limited" added as a part thereof, the contemplated duration of the association (which shall not in any case exceed twenty years) and the names of the officers of said association selected in conformity with the provisions of the act; which statement is recorded in the office of the recorder of deeds of the proper county.

The members of the association are not individually liable for the indebtedness thereof except if an execution is issued against the association and no property can be found, the court, after investigation, shall order the issuance of an execution against the members of the association, who shall be liable to the extent of the capital subscribed and remaining unpaid by them. The word "limited" shall constitute the last word of the name of the association. The interest of a member in the association is declared to be personal estate, and it may be transferred, given, bequeathed, distributed, sold, and assigned under such rules and regulations as the association shall from time to time prescribe by a majority vote of its members in number and value of their interest; and, in the absence of rules and regulations the transferee of an interest is not entitled to participate in the business of the association unless elected to membership by a vote of the majority of the members in number and value of interest. Any change of ownership which occurs in the absence of rules and regulations governing such transfer, and which is not followed by election to membership, entitles the transferee only to the value of the interest so acquired at the time of acquiring the same, at a price and terms to be agreed upon, and in default of agreement, at a price and terms to be determined by an appraiser to be appointed by the Court of Common Pleas.

One meeting per annum is required of the association, and it is also required that there shall be elected not less than three nor more than five managers, who shall manage the affairs of the association, and it is prohibited from contracting any liability except by one or more of the managers. The association may divide the profits of the business in such manner and amounts as the majority of its members may determine, which division shall not "diminish or impair the capital of the said association." It is prohibited from loaning its credit, name, or capital to any member of the association. It may be dissolved by the expiration of the period fixed for its duration, or by a majority vote of its members in number and value of interest; and when dissolved, after paying its liabilities, the remainder of its assets shall be distributed in proportion to the interests of the members. It is authorized to adopt and use a common seal; and contributions to the capital may be made in real or personal property, at a valuation to be approved by all the members. All real estate is held and owned in the name of the association, and it must "sue or be sued in the association name, and when suit is

brought against any such association service thereof shall be made upon the chairman, secretary, and the treasurer thereof, which service shall be as complete and effective as if made upon each and every member of such association;" and service of process may also be had upon any agent, chief, or any other clerk or upon any director or manager of such association in any county where the association may maintain or keep an office for the transaction of business.

The excise tax created by section 38 of the Act of August 5, 1909, is made to apply to "every corporation, joint stock company, or association organized for profit, and having a capital stock represented by shares * * * organized under the laws * * * of any State."

I have no doubt that an association organized as above shown falls within the provisions of this act. Its organization is perfected under statutory authority, and while it is denominated a partnership association, yet it is given, as a separate entity, every privilege and power that is essential to constitute an incorporated body. In fact, some privileges are conferred which might have been omitted and still it would fall within the provisions of the act.

A similar question arose in the case of Liverpool Insurance Co. *v.* Massachusetts, 77 U. S. 566. A statute of the State of Massachusetts imposed a tax upon "each fire, marine and fire, and marine insurance company, incorporated or associated under the laws of any government or State other than one of the United States." It was insisted that this insurance company was not a corporation or association within the meaning of the statute. It appeared from an analysis of its articles of association, as authorized by the Parliament of Great Britain that (1) it had a distinctive and artificial name by which it could make contracts; (2) that it could sue and be sued in the name of one of its officers, and the whole body was bound by the judgment; (3) that it had a provision for perpetual succession by transfer and transmission of its shares of capital stock; and (4) that its existence as an entity, apart from its shareholders, was recognized by the Act of Parliament, which enabled it to sue its shareholders and be sued by them. On the other hand, its individual members were liable for the debts of the company, and it could not be sued in its artificial name, and the Act of Parliament under which it was organized, expressly declared that such organization should not "be held to constitute the body a corporation." The court held that the organization was an artificial body which possessed all the essential elements of a corporation, and that the declaration in the act under which it was organized, that it should not be so considered, could not alter the fact, and therefore held that it was liable to the tax specified in the Massachusetts statute.

An association organized under the Pennsylvania statute has an artificial name in which all of its business is transacted, and by which it can sue and be sued; it has perpetual succession for the length of time specified in the articles of association, and while there is no positive provision which authorizes it to sue and be sued by a member of the association, yet there can be no doubt that any member of the association is at liberty to make a separate contract with it as a person, and that an action thereon could be maintained by either party, and that a right of action of any other kind might arise, and be litigated between them. In addition to this, a member of the association is exempt from liability for its indebtedness, except as to the amount of capital subscribed by him.

Such an association also clearly falls within the definition of a corporation given by Mr. Justice Field in B. & P. R. R. Co. *v.* Fifth Baptist Church, 108 U. S. 330, to wit:

"Private corporations are but associations of individuals united for some common purpose and permitted by law to use a common name and to change its members without a dissolution of the association."

And also the definition given by the Supreme Court of New York, in People *v.* Assessors of Watertown, 1 Hill, 620, which was quoted with approval by the Supreme Court of Maine, in Sibley *v.* Lumber Association, 93 Me. 401:

"A corporation is a collection of individuals united in one body under such a grant of privileges as secures the succession of members without changing the identity of the body, and constitutes the members for the time being one artificial person or legal being, capable of transacting some kind of business like a natural person."

And within the definition given by Chief Justice Marshall in the Dartmouth College Case, 4 Wheat. 517, 636, that —

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law."

The law creating this tax contains no special requirements as to what powers this artificial person shall possess, the only essentials being that it shall be organized under a law, that its object shall be for profit, and that it shall have a capital stock represented by shares. The capital of these associations is subscribed for in the usual way, and the members own an interest in the capital stock in proportion to the amount subscribed by them.

In 1 Cook on Corporations, § 12, it is said that a share of stock may be defined as —

"A right which its owner has in the management, profits, and ultimate assets of the corporation."

The interest of the members of the associations in question certainly falls within this definition. It is true that the issuance of certificates of shares is not required, but a certificate of stock is but a mere muniment of title, a mere evidence of ownership and not the share itself.

"It operates to transfer nothing from the corporation to the stockholder, but merely affords to the latter the evidence of his rights." 1 Cook on Corporations, 13.

I am of the opinion, therefore, that associations organized under this Pennsylvania state are liable to the tax imposed under section 38 of the Act of August 5, 1909.

2. Mutual savings banks organized under an act for the incorporation of savings banks, passed by the legislature of West Virginia February 21, 1887, and amended by the Act of February 24, 1899.

Such a bank may be organized by not less than thirteen persons, citizens of the State, whose fitness for the proposed trust is certified to by the judge or judges of the Circuit Court of the county wherein the proposed savings bank is to be located. The form of the charter, and the method of procuring the same, is particularly set forth. From the incorporators, and those subsequently added thereto, if they are selected by the body on the approval of the judge or a board of trustees, and who have power to act for the corporation. These trustees elect from their number a president and vice-president, and

appoint all necessary officers to transact the business of the bank. The bank, when organized, is authorized to receive any sum of money for deposit, and to invest the same as authorized by the act, and the deposits with dividends accrued thereon are required to be paid to the depositors under rules and regulations to be adopted by the board of trustees. By section 24 it is provided that the income or profit of any such savings bank, after the deduction of all reasonable expenses incurred in the management thereof and the guaranty fund, shall be divided among its depositors or their legal representatives, at such times as may be fixed by its by-laws. There is no capital subscribed and the business consists in receiving deposits and investing the same so received in accordance with the provisions of the charter and the by-laws adopted thereunder, and of repaying the depositors; and all the profits, after the payment of the necessary expenses, are divided among the depositors.

There is no question that such a concern is a corporation; but is it a corporation "organized for profit and having a capital stock represented by shares," as is required by the statute? In a certain sense, such a banking institution is organized for profit, — that is, it affords a reasonably safe means for the investment of one's capital; but its organization and the transaction of its business is not for the profit of those who constitute its managing body, except in so far as they may be depositors. But the more serious question is, whether such an institution has a capital stock represented by shares. Can the depositors who place their money temporarily with such an institution, having no right to participate in its management, be regarded as shareholders, and the respective amounts deposited be considered as shares? I think an answer to these questions may be found in the following authorities:

The case of Huntington *v.* Savings Bank, 96 U. S. 388, involved an institution of precisely the same character. The suit was brought by an administrator of a deceased trustee, on the theory that he was entitled to a *pro rata* of the accumulated profits. In discussing the nature of the corporation, the Supreme Court, among other things, said:

"It is to be noticed that the charter does not authorize the creation of any corporate stock or capital, nor does it contemplate the existence of any other than the deposits which may be made. The corporators are not required to contribute anything. There are, of consequence, no shareholders. Not a word is said in the instrument respecting any dividends of capital, or even of profits, to others than the depositors. Certainly no express authority is given to make dividends to the corporators; and we discover nothing from which such authority can be inferred:

And again:

"The institution having no capital stock, whatever liability, if any there may be to the corporators, must be satisfied out of the profits made from the deposits."

And with reference to the object of the corporation, it was said:

"It is not a commercial partnership, nor is it an artificial being the members of which have property interests in it, nor is it strictly eleemosynary. Its purpose is rather to furnish a safe depositary for the money of those members of the community disposed to intrust their property to its keeping. It is somewhat of the nature of such corporations as church wardens for the con-

servation of the goods of a parish, the college of surgeons for the promotion of medical science, or the society of antiquaries for the advancement of the study of antiquities. Its purpose is a public advantage, without any interest in its members."

In Hannon *v.* Williams, 34 N. J. Eq. 258, the court, in considering the nature of a savings bank of this character, said:

"Savings banks differ widely in their objects, organization, and character from ordinary banks and other joint stock companies. They have no capital stock. They are incorporated and organized not for the advantage of the corporators, but solely for the benefit of the depositors. Their object, as stated in some of the early charters of this State, is to receive and safely invest the savings of mechanics, laborers, servants, minors, and others, thus affording to such persons the advantages of security and interest for their money, and in this way ameliorating the condition of the poor and laboring classes by engendering habits of industry and frugality.

"Properly organized and conducted, a savings bank is a *quasi*-charitable and purely benevolent institution; its only object, the safekeeping and provident investment of the funds of the depositors. The members of the corporation have no property interests in its funds, of which they are by law constituted the managers and guardians. The depositors who alone are beneficially interested in the prosperity of the bank, have no voice in its management, nor even in the selection of the persons to whom its management is intrusted."

In Savings Bank *v.* Town of New London, 20 Conn. 111, 117, the Supreme Court of Connecticut, in speaking of the nature of deposits in savings banks, said:

"Deposits are not stock within the most enlarged use of the word; nor are they regulated as such, but are more like deposits in other banks, drawing a stipulated interest. They are money put into the hands of trustees, to be loaned out; and whether it comes to the trustees from one man or many men, makes no difference in view of the law."

Mr. Justice Field, in Bailey *v.* Clark, 88 U. S. 286, in defining the capital of a corporation, said:

"When used with respect to the property of a corporation or association, the term has a settled meaning; it applies only to the property or means contributed by the stockholders as the fund or basis for the business or enterprise, for which the corporation or association was formed;" and the court therefore held that money borrowed from time to time by a banker and temporarily used in the course of business did not constitute a part of the capital of the bank.

I have been unable to find any authority in which it has been held that a savings bank organized and doing business as is provided for by the laws of West Virginia, has a capital stock or that its depositors are shareholders.

In the case of Hannon *v.* Williams, *supra*, the court, in arriving at the conclusion that a depositor of a savings bank could not set off his deposit after the bank had failed against a liability to the bank created by a loan, likened a depositor's relationship in some respects to that of a stockholder as well as a creditor, saying that in prosperity they are the stockholders among whom the profits are divided, while in case of insolvency they are the creditors,

among whom the remaining assets are to be distributed; but the court, as heretofore shown, held that such an institution has no real capital stock, and made this remark only by way of argument to show the rights of depositors in cases of the character there under consideration.

From the language of the act creating this excise tax and the nature of these savings banks, I am constrained to hold that they are not subject to the tax imposed by section 38 of the Act of August 5, 1909.

I hardly need add that this conclusion does not apply to so-called savings banks which have a capital stock as other banking institutions.

Respectfully,

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.

Attention is also called to the opinion of the Attorney-General of the United States, of date March 31, 1910 (see Appendix HH.), which reads as follows, to wit:

SIR: — In your communication of February 4, 1910, you ask my opinion with reference to whether certain business concerns which are known as the Snow Associates, the Department Store Trust, the Fallow Real Estate Trust, and the Broomfield Building Trust fall within the provisions of section 38 of the Act of August 5, 1909 (36 Stat. 112), which provides for an excise tax with respect to the carrying on or doing business by corporations, joint stock companies, and associations, and in reply thereto I have the honor to say:

All of these companies have the same general plan of organization, and the Snow Associates will be taken as an example.

This company was organized under and by an agreement and declaration of trust which contained the following provisions: The purpose of the trust was the improving and holding of four parcels of real estate which were particularly described, and the title thereto was vested in three persons as trustees, who were to perform their duties under the powers granted by the declaration of trust. The title to the property was vested exclusively in the trustees, so that the shareholders are without interest therein other than that conferred by their shares issued under the terms of the trust, and have no right to call for partition, accounting, or division of the property, rights, or interests. The capital is $1,224,000 divided into shares of $100 each. The trustees issued certificates to the shareholders for the number of shares to which each was entitled. In addition to the shares, amounting to $1,224,000, the trustees retained in their hands shares of the par value of $100,000 for the purpose of raising funds to improve the property, and to purchase additional real estate, to pay for mortgages, etc. At meetings of the shareholders each share is entitled to one vote. Shareholders may transfer their shares on surrender of their certificates upon books to be kept by the trustees in the manner usual for the transfer of shares of stock of corporations, or in such other manner as the trustees may prescribe. The death of a shareholder does not terminate the trust or give his legal representative a right to an accounting or to take any action in the courts or otherwise, against the shareholders, but entitles the legal representative of the deceased to receive a new certificate

in place of the certificate held by the deceased. No assessments can be made upon the shareholders, and the instrument contains a stipulation that they are exempt from personal liability on account of contracts entered into or torts committed by the trustees. The shareholders meet annually, and they have also such special meetings as may be called by the trustees. The shareholders at such meetings fill vacancies in the number of trustees, and may depose any or all of the trustees and elect others in their place. The trustees are empowered to execute instruments which are conclusive upon the associates. The trust shall continue for twenty years after the death of the last surviving original subscriber; provided that a majority in interest of the total number of shares may direct a sale of the property at any time, and upon such sale and distribution among the shareholders in proportion to their interest the trust shall be terminated. The trustees are vested with full power of leasing and letting, and have exclusive management of the property, and can borrow money for temporary exigencies, which shall bond the assets of the trust but not the shareholders individually. They also have the power to mortgage the property for a sum not exceeding $100,000 for the purpose of making improvements or to extinguish liens; and they determine the amount of net income and declare such dividends as in their opinion may be judicious, and invest in such manner as they see fit any moneys which they may have on hand.

This association possesses all of the essential elements of a common-law joint stock company, which is defined to be —

"An association of persons for the purpose of business, having a capital stock divided into shares and governed by articles of association which prescribe its objects, organization, and procedure, and the rights and liabilities of the members, except that the articles cannot release the members from their liability as partners to the creditors of the company;"

And is otherwise defined as —

"An association of individuals possessing a common capital divided into shares of which each member possesses one or more. These shares represent the interests of the members and are transferable by the owners without the consent of the other members or the creditors of the association." 2 Cook on Corporations, 504.

In Spotswood *v.* Morris, 12 Idaho, 360, it was held that any corporation, association, or joint stock company may be formed by individuals for the purchase of a single tract of real estate, the title to which may be taken in the trustee.

There can be no doubt that this concern is an association organized for profit and having a capital stock represented by shares. But it is earnestly insisted on behalf of these companies that the statutory requirements that a company in order to be amenable to the tax, shall be "organized under the laws of the United States or of any State or Territory of the United States" has reference to statutory laws which prescribe specifically a method or plan of organization, and which confer franchises upon the body when organized; in other words, that the joint stock companies and associations contemplated by the act are only such as have some form of corporate existence. If this were true, then the phrase "joint stock company or association" would be surplusage, but I am not willing to give assent to such a construction.

That this company has an organization goes without saying. Its trustees compose a board of managers upon whom rest the same duties as those imposed upon the board of directors of a corporation. The trustees may be discharged and their successors elected in the same way or in a way similar to that by which the directors of a corporation may be discharged and their successors elected. A change of trustees affects the business of the concern no more than the change of directors of a corporation. Trustees come and go, but the title to the property remains with those having charge of its affairs, and its business is still conducted by them precisely the same as the business affairs of a corporation continue with it after a change of directors. The same conditions exist as to the shareholders. The shareholders are transferable by assignment in like manner as the shares of a corporation. Such assignment has no effect whatever on the business of the company, and the shareholders possess only the rights of drawing dividends and participating indirectly by vote in the management of the concern, the same as are enjoyed by the shareholders of a corporation. Under its organization, the period of its existence is fixed just as is that of a corporation by statute, and the death of its trustees or shareholders do not terminate or affect its existence any more than do the death of the directors or shareholders of a corporation; and in the period fixed for its existence by the articles of association it can be dissolved only by vote of its shareholders, which power is likewise possessed by the shareholders of a corporation. It is true that its shareholders cannot by contract free themselves from personal liability; but in Liverpool Insurance Co. *v.* Massachusetts, 77 U. S. 566, 575, it was held that the fact that the shareholders of a joint stock company organized under an Act of Parliament, which expressly declared that such company should not constitute a corporation, were individually liable for its debts, did not relieve it from taxation under a statute which imposed a tax upon "each fire, marine and fire, and marine insurance company incorporated or associated under the laws of any government or State other than one of the United States."

In short, the organization of this company is just as compact, and in fact is practically the same, as that of an ordinary corporation organized under a general or special statute.

Nor can it be denied that its organization is sanctioned by the laws of Massachusetts and that it obtains its vitality from those laws, just as much as a corporation organized under a special act of the legislature of that State derives its vitality from such act. Such an association, therefore, is based on the laws of Massachusetts, and, in fact, is organized thereunder.

By the expression "laws of a State," as used in statutes, reference may be had to the common law, as well as the statutory law of such State. Lycoming Fire Insurance Co. *v.* Medad Wright & Son, 60 Vt. 515; State *v.* Dyer, 67 Vt. 690, 697.

I am of the opinion, therefore, that these various business organizations are "joint stock companies or associations organized for profit and having a capital stock represented by shares," organized under the laws of the State of Massachusetts, within the meaning of the excise law enacted by section 38 of the Act of August 5, 1909, and that they are amenable to the tax created thereby."

Under date of April 4, 1910 (see Appendix L.), the commissioner of internal revenue issued the following bulletin. (T. D. 1611):

To the Collectors of Internal Revenue, Revenue Agents, and Other Internal Revenue Officers:

It appears that there are in Massachusetts, and perhaps elsewhere, various organizations known as "associates," "trusts," or "real estate trusts," which are not organized under a charter but are formed by an agreement and declaration of trust. It appears that the title to the property or business owned or operated by these organizations is vested in one or more trustees, and certificates are issued to parties in interest as are shares of stock of incorporated concerns, the certificates being traded in as are shares of stock and the trustees being elected and their successors chosen as are directors in any corporation regularly chartered. The organization is one for profit, and it possesses all of the essential elements of any joint stock company.

In reply to a request from the Secretary of the Treasury as to the status of these organizations, in regard to the corporation excise tax provisions of the Tariff Act of August 5, 1909, the honorable attorney-general advises that these concerns are joint stock companies or associations organized for profit and having a capital stock represented by shares and are amenable to the provisions of the Corporation Excise Tax Law.

Collectors of internal revenue, in whose districts there may be located organizations of this character, will see that such organizations comply with the provisions of this law.

In Elliot *v.* Freeman *et al.*, 220 U. S. 178, the United States Supreme Court held that the federal corporation tax was not applicable to real estate trusts organized under the laws of Massachusetts, not of statutory origin.

In Zonne *v.* Minneapolis Syndicate *et al.*, 220 U. S. 187, the United States Supreme Court held that where a corporation originally organized for the purpose of owning and renting an office building, leasing the property for one hundred and thirty years, and reorganized and practically went out of business, its sole authority being to hold the title subject to the lease and to receive and distribute the rentals accruing thereunder, or the proceeds of sale, if the property should be sold; that under such circumstances it would not be liable to the payment of the federal corporation tax.

A clear limitation of the number of organizations embraced within the act is to be found in the opinion of the United States Supreme Court in Elliot *v.* Freeman *et al.*, 220 U. S. 178. In

that case the court held in effect that to be subject to the payment of the tax not only must the corporations and associations be organized for profit and have a capital stock represented by shares, but they must further have been organized under some statute or derive from that source some quality or benefit not existing at the common law.

Sec. 20. Meaning of "Organization for Profit." — In defining what corporations shall be subject to the tax express limitation is to be found in the words "only such corporations, joint stock companies or associations as are organized for profit." The qualifying phrase here used, to wit, "organized for profit," unquestionably applies to each of the classes of legal entities which precede it, to wit, corporations, joint stock companies and associations.

In other words, Congress clearly intended to include within the operation of the act, business corporations, and to exclude all eleemosynary bodies organized and operated exclusively for religious, charitable or educational purposes. The word "organized," as here used, has reference to the inception of the enterprise, and includes all such preliminary steps as might be necessary in order to create the necessary legal machinery for conducting the particular business enterprise in hand.

The word "profit," as used in the act, has a distinct meaning and relates unquestionably to the pecuniary gain to accrue to each of the members of the organization who contribute from their means to the common fund.

Sec. 21. Meaning of the Phrase, Having a Capital Stock Represented by Shares. — To bring any corporation, company or association within the purview of the Federal Corporation Act it must not only have been organized for profit, but in addition thereto it must have a capital stock represented by shares. The phraseology here used eliminates in itself all partnerships, both general and limited from the operation of the act. The words "capital stock," as here used, refer to the money, property or services contributed by the members of the corporation, joint stock

company or association to the capital thereof, and is commonly represented by shares issued to such members at the inception of the particular enterprise to which such contribution has been made. (See Christensen *v.* Eno, 106 N. Y. 97, 12 N. E. 648.)

The title to such capital stock as here referred to vests in the corporation, joint stock company or association, while the title to the shares therein vests in the members. (See Van Allen *v.* Assessors, 3 Wall. 573, 18 L. E. 229.)

A court of high authority (McGinty *v.* Athol Reservoir Co., 155 Mass. 183, 29 N. E. 510) has held that where no governing statute intervenes, a business corporation may exist without share ownership. (See Malleson *v.* Gen. Mineral Pat. Syndicate, L. R. 3 Chan. 538.) However, in the United States the rule is well nigh universal that business corporations, joint stock companies and unincorporated associations for profit must and in practice do have a capital stock represented by shares.

Thus the Attorney-General of the United States has rendered an opinion February 14, 1910, (see Appendix EE.) to the effect that mutual savings banks having no capital stock, are not liable to payment of the federal corporation tax.

So again, the commissioner of internal revenue, in his bulletin dated March 29 (T. D. 1606, see Appendix K.), has taken the position that holding companies known as "voting trusts," receiving only dividends on stock, but having no capital stock, are not liable to the payment of the tax.

He, however, took the position that corporations organized for the purpose of holding real estate were subject to the payment of the tax. This opinion has since been confirmed by the decision of the United States Supreme Court in Flint *v.* Stone Tracey Co., 220 U. S. 107.

The commissioner of internal revenue has ruled that corporations organized to sell provisions, etc., to stockholders are subject to the payment of the tax. (See T. D. 1606, March 29, 1910, see Appendix K.)

Sec. 22. Definition of Insurance Companies as Used in the Act. — The Federal Corporation Tax Act, after making every corporation, joint stock company or association organized for

profit and having a capital stock represented by shares, subject to the tax thereby imposed, added thereto the following words "and every insurance company."

As a majority of insurance companies are corporations, it becomes pertinent to inquire why insurance companies were separately enumerated in the act. The underlying purpose in this regard unquestionably was to include within the terms of the act insurance companies which, while organized for profit, yet did not have a capital stock divided into shares. In order to understand the full scope and meaning of the words "insurance companies" as employed in the act, it will be necessary to define "insurance" as therein used.

In legal acceptation, "insurance" is an agreement whereby one party (called the insurer) for a valuable consideration (termed the premium) agrees to indemnify another (called the insured) in a stipulated amount, against the happening of a designated event. The latter may be the act of an individual or an act of God. It includes all kinds and classes of insurance companies, such as life, fire, marine guaranty, casualty, burglary and employers' liability companies.

From the standpoint of the exercise of the taxing power of the government the benefit to be derived from the enumeration of insurance companies in the manner stated, is that it brings within the operation of the act all insurance companies of a mutual character, save and excepting those classes of mutual companies excepted from the operation of the tax (fraternal beneficial societies, orders or associations operating under the lodge system, and providing for the payment of life, sick, accident and other benefits to the members of such orders, societies or associations and dependants of such members).

Sec. 23. Character and Purpose of Corporations, Joint Stock Companies and Associations — How Determined. — One general rule may be laid down for determining the character and purpose of any particular corporation, joint stock company or association. It is this. Such character or purpose is not ordinarily to be gained from the actual business transacted thereby, but rather from the formal statement of the character and pur-

pose of the organization, as set forth in the charter, articles of agreement or articles of association of any such corporation, joint stock company or association. The same rule should be applied here that has been so often invoked successfully in determining whether certain corporations come within the statutory definition of certain kinds of corporations, which are made subject to a designated statutory liability.

Thus, for example, in Minnesota a statute exists imposing a statutory liability upon all stockholders of corporations except those organized for the purpose of carrying on any kind of manufacturing or mercantile business. The Minnesota Supreme Court when called upon to determine whether any particular corporation was engaged in manufacturing or mercantile business, has uniformly held that the character of the corporation under such circumstances is to be determined not by the kind of business actually carried on by it, but by the kind of business authorized by its articles of incorporation. (Minn. Title Ins. Co. *v.* Regan *et al.*, 72 Minn. 431, 75 N. W. 722; Gould *v.* Fuller, 79 Minn. 414, 82 N. W. 673; Senour Mfg. Co. *v.* Church Paint, etc., Co., 81 Minn. 294, 84 N. W. 109; Cuyler *v.* City Power Co., 74 Minn. 22, 76 N. W. 948; Nicollett Nat. Bank *v.* Frisk-Turner Co., 71 Minn. 413, 74 N. W. 160.)

The rule here referred to is unquestionably applicable in determining whether a particular corporation, joint stock company or association comes within the purview of the federal corporation tax enactment.

Sec. 24. General Statement as to Classes of Companies Excepted From the Operation of the Act. — Section 1 of the Federal Corporation Law (lines 26 to 37) expressly exempts from the operation of the act all labor, agricultural or horticultural corporations, fraternal beneficial societies, orders or associations operating under the lodge system, and providing for the payment of life, sick, accident and other benefits to the members of such societies, orders, associations and dependants of such members, and domestic building and loan associations organized and operated exclusively for the mutual benefit of their members, corporations or associations organized and operated exclusively for

religious, charitable or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

It should be observed that owing to the plain wording of the provision of the act here referred to, any one of the excepted organizations named above if not organized for profit yet may have a capital stock represented by shares and still not be subject to the tax imposed by the act.

In order to determine specifically just what organizations are excluded from the operation of the federal corporation excise tax, it will now be necessary to construe each of the excepted organizations separately.

It should be clearly borne in mind that the tax imposed by the Federal Corporation Tax Act applies to all corporations, joint stock companies and associations described therein, except those specifically exempted, without reference to the kind of business carried on. (T. R. March 29, No. 1606, see Appendix K.) Any person claiming special exemption, must, nevertheless, make the return required by the act, accompanied by a statement, setting forth the ground on which exemption is claimed. (T. R. March 29, 1910, No. 1606.)

National banks do not come within any of the exemptions named in the Federal Corporation Tax Act. (T. R. March 29, 1910, No. 1606. See opinion of the United States Supreme Court in Eliot *v.* Freeman *et al.*, 220 U. S. 178; Zonne *v.* Minneapolis Syndicate *et al.*, 220 U. S. 187).

Sec. 25. Definition of Labor Organizations. — A labor organization is an association of individuals engaged in the trades and formed for the protection and promotion of the interests of the members thereof, with a view to securing improved wage and labor conditions.

Sec. 26. Definition of Agricultural Organizations. — An agricultural organization is an association of individuals engaged in farming occupations, formed for the protection and promotion of the interests of the members thereof, with a view to securing

improved methods in their work as well as to promote the financial and social welfare of the members.

The commissioner of internal revenue, in his bulletin dated March 29, 1910 (T. R. No. 1606, see Appendix K.), has made the following rulings, relative to the above corporations:

1st. Corporations owning sugar or other plantations and disposing of the products thereof, are not entitled to exemption from the payment of the federal corporation tax as agricultural corporations.

2d. Co-operative dairies, not issuing stock, and allowing patrons dividends based on butter fat in milk, are not liable to the payment of the tax.

3d. Mutual Hail Associations are not to be regarded as agricultural associations, and are therefore, subject to the payment of the tax.

4th. Agricultural organizations are not exempted from the payment of the federal corporation tax unless their chief object is the promotion or advancement of agricultural interests, and no part of the net income thereof inures to the benefit of their stockholders.

Sec. 27. Definition of Horticultural Organizations. — An horticultural organization is an association of individuals engaged in gardening occupations formed for the protection and promotion of the interest of the members thereof, with a view to securing improved methods in their work as well as to promote the financial and social welfare of the members.

As to what constitutes "horticulture" attention is called to the remarks thereon of Mr. Bailey in his Cyclopedia of American Horticulture, as follows:

> **Horticulture is the growing of flowers, fruits, vegetables, and all plants for ornament and fancy.**
>
> **Horticulture divides itself into four somewhat co-ordinate branches. Annals Hort. 1891, 125–130.**
>
> **Pomology, or the growing of fruits. Olericulture, or vegetable gardening. Floriculture, or the raising of ornamental plants for their individual uses or for their protection. Landscape horticulture, or the growing of plants for their use in the landscape, or in landscape gardening.**

Sec. 28. Definition of Fraternal Beneficial Societies. — A fraternal beneficial society is an organization formed for the exclusive benefit of its members and beneficiaries, usually organized under a lodge system more or less secret in its form of work. In practice such organizations are accompanied by a mutual benefit insurance feature, providing for the payment of benefits in case of the death of any of the members.

Sec. 29. Legal Effect of Excluding From the Operation of the Act Certain Classes of Fraternal Beneficial Organizations and Societies. — In order to entitle a fraternal beneficial society to claim exemption from the operation of the Federal Corporation Tax Law it must not only operate under the lodge system, but must further provide for the payment of life, sick, accident and other benefits to members or dependants of members.

In view of the language here employed attention is called to the meaning of the words "operating under the lodge system." Under the ruling of the commissioner of internal revenue (March 29, 1910, T. R. No. 1606, see Appendix K.), the exemption from the payment of the federal corporation tax in favor of fraternal beneficial associations does not apply to mutual fire insurance companies.

Sec. 30. What Is In Fact the Lodge System. — The Federal Corporation Tax Law excludes from the operation thereof only those fraternal beneficial societies, orders or associations which operate under the lodge system, and provide a mutual benefit insurance feature for their members. The lodge system here referred to is the one which characterizes nearly all of the great fraternal orders which exist in the United States, such for example, as the "Odd Fellows," "Masons," "Knights of Pythias," "Order of the Macabees," "Modern Woodmen," "Elks," etc.

The lodge system mentioned in the act has reference to the custom in general use in this country whereby membership in any of these organizations can be obtained only through admittance to some local body called a lodge or chapter, which in its turn must have secured charter from some proper source of authority.

Sec. 31. Meaning of the Phrase "Providing for the Payment of Life, Sick, Accident and Other Benefits to the Members of Such Societies, Orders and Associations and Dependants of Such Members." — The phrase found in section 1 of the Federal Corporation Tax Law, to wit: "Providing for the payment of life, sick, accident and other benefits to the members of such societies, orders and associations and dependants of such members," is merely intended to convey the meaning that only such fraternal organizations operating under the lodge system as make mutual benefit insurance a distinct and inseparable part of the purposes for which they are organized, shall be exempt from the payment of the corporation excise tax which is imposed upon those insurance companies which are not an adjunct of some fraternal organization.

Sec. 32. Definition of Building and Loan Association. — Building and loan associations are organizations usually corporate in form, the primary purpose of which is to accumulate a fund by means of dues from its members, and from other sources, out of which investments may be made from time to time in the form of loans to members exclusively upon the payment of an agreed rate of interest, and sometimes of a premium in addition thereto. (See Rhodes *v.* Mo. Sav. & Loan Co., 173 Ill. 621, 50 N. E. 998; Cook *v.* Equitable Assn., 104 Ga. 814.)

Sec. 33. Meaning of the Phrase, "Organized and Operated Exclusively for the Mutual Benefit of Their Members." — An examination of the charter, constitution and by-laws of any building and loan association, whether national or local in its scope, will serve to show that mutuality is in all cases the essential principal thereof. (See Schell *v.* Equit. Loan, etc., Assn., 150 Mo. 103, 51 S. W. 406.)

It was undoubtedly the recognition of this principle which led Congress to extend the exemption from the operation of the Federal Corporation Tax Law only to those associations "organized and operated exclusively for the mutual benefit of their members."

Building and loan associations are not exempted from the payment of the tax, if they have a capital stock, and loan to others than members, thus doing a business akin to a banking business. (T. R. No. 1606, March 29, 1910, see Appendix K.) So building and loan associations, issuing stock upon which dividends are guaranteed, are liable to the payment of the federal corporation tax. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 34. Definition of Religious Corporations and Associations. — A religious corporation or association is an organization formed under statutory authority for the purpose of promoting the spiritual and moral welfare of its members, as well as to afford a legal method for the protection of title to such property as may have been acquired for the benefit of such members through the medium of permitting the title to such properties to vest in the organization rather than in the members as tenants in common. Such an organization is peculiarly necessary in view of the changing character of religious congregations as well as owing to the fact that belief in some creed or system of church government is usually the motive which induces membership in such organization.

The phrase, "religious organization," has a very broad and catholic meaning, and includes not only what are commonly known as "church organizations," but includes as well Young Men's Christian Associations, Societies for Ethical Culture, and any organization authorized by statute which has for its essential purpose the moral and spiritual uplifting of man.

Sec. 35. Definition of Charitable Organizations and Associations. — A charitable organization or association is one which is founded for altruistic purposes and is not designed to advance the pecuniary or social interests of its organizers or members. In practice this purpose is the distribution of pecuniary aid in the form of shelter, food, medicine, surgical or medical treatment to such persons as may see fit to make use of them under the conditions upon which they are offered.

All such charitable associations as are referred to in the federal corporation tax must be of eleemosynary character, but the fact

that they may receive pay for services rendered will not deprive them of the right to claim that they are excluded from the operation of the act. (See Powers *v.* Mass. Homeopathic Hos., 109 Fed. 294, 47 C. C. A. 122.)

Sec. 36. Definition of Educational Corporations and Associations. — An educational corporation or association is one organized under statutory authority for the purpose of developing either along narrow or broad lines mental and manual capabilities of human beings. (See O'Day *v.* People, 171 Ill. 293, 49 N. E. 504; N. St. Louis Gymnastic Society *v.* Hudson, 85 Mo. 32; Mt. Hermon Boys School *v.* Gill, 145 Mass. 139, 13 N. E. 354; Cook *v.* State, 90 Tenn. 407, 16 S. W. 417.)

Sec. 37. Meaning of the Phrase, "No Part of the Net Income of Which Inures to the Benefit of Any Private Stockholder or Individual." — It should be noted that only those religious, charitable or educational corporations or associations are specifically exempted from the operation of the Federal Corporation Tax Law whose entire net income is devoted to the accomplishment of some public benefit, and no part of which inures to the benefit of any private stockholder or individual. (See act, Appendix A, lines 35–37.) The meaning of this limitation is quite clear. Congress evidently intended by inserting the clause in question to refuse to exempt from the operation of the Corporation Excise Tax Law any so-called "eleemosynary" institution which contemplated in any degree financial benefit to private stockholders or individuals. Thus hospitals and sanitariums organized for private purposes, or schools the net income of which would ultimately go into the pockets of the stockholders or individuals, are excluded from the benefit of the exemption extended to those organizations which are operated exclusively for the benefit of the public. (As to the existence of other exemptions from the operation of the federal corporation tax, other than those specifically enumerated in the act, see opinion of United States Supreme Court in Eliot *v.* Freeman *et al.*, 220 U. S. 178, and Zonne *v.* Minneapolis Syn. *et al.*, 220 U. S. 187.)

Sec. 38. Are Corporations Organized or Dissolved Within the Year for Which the Federal Corporation Tax Is Levied, Subject to the Payment Thereof? — It is entirely clear that all corporations organized within the preceding fiscal year as prescribed in the Federal Corporation Tax Enactment are subject to the payment of the excise tax therein levied, provided the facts as disclosed by the return of such corporations, show that such a tax is due.

Again, the mere fact that a corporation has been legally dissolved under some State statute within the same period of time does not exempt such dissolved corporation from the payment of the corporation excise tax provided such tax would have become due had dissolution not taken place. This on the same principle which has induced the federal courts to hold that notwithstanding the dissolution of a State corporation by the State court it may nevertheless be adjudged a bankrupt under the National Bankruptcy Act. (*In re* Mer. Ins. Co., Federal Cases 9441; *In re* Independent Ins. Co., Fed. Cases 7018.)

Where a company has been dissolved and the required return is not made by its officers, such return will be prepared by the commissioner of internal revenue and the tax assessed thereon, the same as if the report had been regularly made. (T. R. March 29, 1910, No. 1606, see Appendix K.).

The Treasury Department has ruled that all corporations organized during the tax year, or going into liquidation during such period, should nevertheless render a sworn return on the subscribed form. The tax imposed, however, is held by the Treasury Department not to apply to corporations which went out of existence prior to the passage of the act. (T. D. March 29, 1910, No. 1606, see Appendix K.)

In this connection attention is called to the opinion of the Attorney-General, under date of April 2, 1910: (See Appendix II.)

First. Whether or not such corporation is liable for the excise tax created by said section 38 of the Act of August 5, 1909 * * * In answer to this question I will say:

1. In the first clause of section 38, Act of August 5, 1909 (Stat.), it is provided "that every corporation * * * now or hereafter organized under the laws of the United States or of any State * * * shall be sub-

ject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation * * * equivalent to one per centum of the entire net income over and above $5,000 received by it from all sources during such year." That is the tax payable annually, and it is imposed "with respect to the carrying on or doing business by such corporation," and the amount of tax is fixed at one per centum upon its net income above $5,000 received during such year — that is, the year during which the business is transacted with reference to which the tax is imposed. By the third paragraph it is provided that the income of the corporation shall be computed for the year ending December 31, 1909, and for each calendar year thereafter. Therefore, the assessment of the tax is always for the year preceding its collection and not for the year within which the collection is made, and the present assessment is for the year 1909. It follows, therefore, that any corporation which was engaged in business after the approval of the act on August 5, 1909, is amenable to this tax.

In Pennsylvania, etc., Company *et al. v.* New York City Railway *et al.*, 176 Fed. 471, the court spoke as follows:

The receivers ask instructions as to what action, if any, they shall take under Act August 5, 1909, c. 6, 36 Stat. 112 (U. S. Comp. St. Supp. 1909, 844), referring to section 38, which provides for special excise tax upon net income of certain corporations, joint stock companies, and associations. The act contains no provisions as to receivers, and it is not felt that Congress intended to include bankrupt corporations without any net income whose properties are being administered by a court. It would seem to be sufficient if at the time fixed they make a return and statement to be filed with the proper officer showing that these roads are in the hands of receiveds. Whether the various railway companies are or are not within the terms of the act as corporations carrying on business and receiving a net income, is a question which they will of course determine for themselves upon the advice of their counsel. Whether, if this tax be properly assessed upon them should be paid by the receiver or lessee, is a question to be determined when it may arise. Such determination will be in no way affected by the present decision since "practical construction as to such tax cannot be shown."

Sec. 39. Definition of Foreign Corporations. — The phrase "foreign corporation" as employed in the Federal Corporation Tax Law includes any corporation, joint stock company or association not organized under the laws of the United States or of any State or Territory of the United States or of the Act of Congress applicable to Alaska or the District of Columbia.

"Companies organized under the laws of the United States" has reference to those corporations which are specifically created by an Act of Congress and does not include corporations organized under a general and enabling Act of Congress extending to execu-

tive heads or subordinate legislative bodies located in the possessions of the United States, the right at their option to authorize the creation of corporations, joint stock companies or associations.

The word "territory" as used in this immediate connection undoubtedly has reference to Alaska, Arizona and New Mexico and possibly Hawaii, and does not include the possessions of the United States, such as Porto Rico, the Philippine Islands, Guam or the Island of Tutuila. Were this not so, there would have been no occasion to so specifically refer in the act to those corporations, joint stock companies or associations "organized under the Acts of Congress, applicable to Alaska or the District of Columbia."

The Treasury Department has made a specific ruling that companies organized in Porto Rico and not engaged in business in the United States are not subject to the payment of the federal corporation tax. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 40. What Foreign Corporations Are Subject to the Payment of the Federal Corporation Tax Law. — Only those corporations, joint stock companies or associations organized for profit, and having a capital stock represented by shares organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska, or in the District of Columbia, are subject to the payment of the federal corporation excise tax. Here again, the word "territory" undoubtedly has reference to Arizona and New Mexico, and does not apply to the other territorial possessions of the United States.

The Attorney-General in his opinion rendered March 9, 1910 (see Appendix), had occasion to go into the question as to whether foreign steamship companies, owning vessels plying between American and foreign ports, are subject to the payment of the federal corporation tax. This opinion reads as follows:

SIR: — I have the honor to acknowledge receipt of your communication of January 28, 1910, in which you inquire whether, in my opinion, foreign steamship companies engaged in the business of ocean transportation of passengers, freight, and mails in ships owned by them plying between America and foreign ports, which companies maintain agencies in this country where passenger tickets may be bought and freight received for transportation, are corpora-

tions subject to the special excise tax provided by the Act of August 5, 1909 (36 Stat. 112).

The act in question is by its provisions made applicable to all corporations organized under the laws of any foreign country which receive an income from business transacted and capital invested within the United States. But it is first insisted upon the part of these steamship companies that, inasmuch as the receiving and discharging of cargoes and passengers is a mere incident in the transportation of their cargoes and passengers over the high seas, they have no income derived from business transacted in the United States.

I am of the opinion that this contention cannot be maintained. These companies have a large amount of capital invested in wharves, warehouses, and other facilities essential to carrying on their business in this country. Their business consists entirely in transporting passengers and goods and merchandise between ports in this country and those of foreign countries, and receiving and discharging the same. Through agents located here all contracts and arrangements incident to such a business at this end of their lines are made, and all exports are delivered to their warehouses and are loaded upon their vessels, and the passengers embark, while they are within the limits of the United States; and likewise while here their imports are unloaded and passengers from foreign ports disembark. If these companies do not transact business in the United States, they transact no business in any foreign port, and their entire business is carried on upon the high seas. To such a conclusion I am unable to give assent.

It is next insisted that, inasmuch as they are engaged in the transportation of exports, the tax in question is a tax upon exports, and that the legislation is void as to them under that clause of section 9, article 1, of the Constitution, which provides that "no tax or duty shall be laid on articles exported from any State." In support of this contention the following cases are cited:

Brown *v.* Maryland, 12 Wheat. 419, wherein the Supreme Court had under consideration a section of an act passed by the Legislature of Maryland, which provided:

"That all importers of foreign articles or commodities, of dry goods, wares or merchandise, by bale or package, or of rum, wine, brandy, whisky and other distilled spirituous liquors, etc., and other persons selling the same by wholesale, bale or package, hogshead, barrel or tierce, shall, before they are authorized to sell, take out a license, as by the original act is directed, for which they shall pay fifty dollars."

The court held that this section, in so far as it applied to importers, was invalid, because it was in effect a tax levied by the State upon imports, which under the Constitution was prohibited.

Almy *v.* California, 24 How. 169, wherein it was held that an act passed to provide revenue from a stamp tax on bills of lading for the transportation from any point or place in that State to any point or place without the State of gold or silver coin, gold dust, gold or silver in bars or other form, and which required that such stamp be attached to every such bill of lading or stamped thereon was invalid because it was the imposition of a tax upon exports.

Fairbanks *v.* United States, 181 U. S. 283, wherein it was held that the stamp tax on a foreign bill of lading provided for by the act of June 13, 1898, was equivalent to a tax on the articles for which the bills were given, and was violative of the above-quoted provision of the Constitution.

I am of the opinion that the principles decided in these cases are not applicable to the statute now under consideration. The tax imposed by this act is, as declared therein, "a special excise tax with respect to the carrying on or doing business" by the corporation; and I held in an opinion transmitted to you on January 13, 1910, that it is not a tax on the property owned by the corporation, or upon the income from such property, but is in the strict and constitutional sense an excise tax; and that, for that reason, the income from the interest on United States bonds should be computed in the gross income of a corporation, and should not be excluded in ascertaining its net income. If I was right in that conclusion, then this tax is not imposed upon exports carried by these steamship companies, or even upon the income derived from the transportation of such exports.

But, aside from this, I think there is a very material distinction between the present act and those involved in the cases above cited. The passengers carried by these companies are not exports within the meaning of this clause of the Constitution. Crandall *v.* Nevada, 6 Wall. 35. And Congress has express power to tax imports. Consequently the revenues of these companies are derived from different classes of business, the larger portion of which is subject to taxation. The act does not undertake in its terms to make any distinction between the different kinds of business in which these or any other corporations embraced therein are engaged, but the tax is imposed upon them all alike, not as exporters of merchandise, but as an incident to their entire business. Such were not the facts in either of the cases cited.

In Brown *v.* Maryland but two classes of persons were mentioned in the act, one importers of the articles designated, and the other wholesale dealers in those articles; and under its provisions an importer was required to pay the tax before a sale of the imported articles could be made, regardless of the size of the article or the amount sold. The act therefore imposed the tax upon the importer as such, he being subjected thereto solely because he was the recipient for sale of imported articles. A careful analysis of the reasoning of the court will show that the decision was rested upon this fact. In support of the holding that the prohibition to tax the imported articles does not cease the moment it lands, the court used the following illustrations:

"The United States have the same right to tax occupations which is possessed by the States. Now, suppose the United States should require every exporter to take out a license, for which he should pay such tax as Congress might think proper to impose; would the government be permitted to shield itself from the just censure to which this attempt to evade the prohibitions of the Constitution would expose it by saying that this was a tax upon the person, not on the article, and that the legislature had a right to tax occupations? Or, suppose revenue cutters were to be stationed off the coast for the purpose of levying a duty on all merchandise found in vessels which were leaving the United States for foreign countries, would it be received as an excuse for this outrage were the government to say that exportation meant no more than carrying goods out of the country, and as the prohibition to lay a tax on imports or things, imported ceased the instant they were brought into the country, so the prohibition to tax articles exported ceased when they were carried out of the country?" (Page 444.)

It will be observed that the first illustration deals with the exporter as

such, while the second deals directly with the exported article while in transportation. But the distinction is more clearly drawn in answering the contention that if the act be invalid, then an importer could without being subject to a tax imposed by the State, sell his goods either as retailer or peddler; or that silver plate imported for his own use would not be subject to taxation. The court upon this subject said:

"This indictment is against the importer, for selling a package of dry-goods, in the form in which it was imported, without a license. This state of things is changed if he sells them or otherwise mixes them with the general property of the State, by breaking up his packages, and traveling with them as an itinerant peddler. In the first case the tax intercepts the import, as an import, in its way to become incorporated with the general mass of property, and denies it the privilege of becoming so incorporated, until it shall have contributed to the revenue of the State. It denies to the importer the right of using the privilege which he has purchased from the United States until he shall have also purchased it from the State. In the last cases the tax finds the article already incorporated with the mass of property by the act of the importer. He has used the privilege he had purchased, and has himself mixed them up with the common mass, and the law may treat them as it finds them. The same observations apply to plate or other furniture used by the importer. So, if he sells by auction." (Page 442.)

Therefore the same article in the hands of the same person may be taxable or not, according to whether it still retains the character of an import.

So, in the other cases cited, the stamp tax was attached to the bill of lading, which accompanied the exported article, and was, by the language of the acts, made applicable to exports as such.

On the other hand, in Turpin *v.* Burgess, 117 U. S. 504, it was held that a stamp required to be fixed to every package of tobacco intended for exportation, before its removal from the factory, was constitutional because the tobacco had not become an article of export; and in discussing the question in referring to the two clauses of the Constitution wherein taxes upon exports are prohibited, and the States are prohibited from imposing, without the consent of Congress, taxes upon imports, the court said:

"The prohibition in both cases has reference to the imposition of duties on goods by reason or because of their being exportation or intended exportation, or while they are being exported. That would be laying a tax or duty on exports or on articles exported within the meaning of the Constitution, but a general tax laid on all property alike, and not levied on goods in course of exportation or because of their intended exportation, is not within the Constitution prohibition." (Page 507.)

And in Cornell *v.* Coyne, 192 U. S. 418, wherein it was held that filled cheese was not exempted from taxation under this clause of the Constitution because manufactured expressly for exportation, the court quoted with approval the foregoing language of the court in Turpin *v.* Burgess.

It appears, therefore, that the validity of an act, under this clause of the Constitution, which taxes an article, depends not upon whether it will increase the price of the article when exported, but whether it is taxed as an export. In like manner and for the same reason the validity of a tax imposed upon a business depends not upon the fact that, incidentally, along with its other

business, the concern is engaged in exporting articles or carrying exports, and that the tax may thus incidentally increase the price of such articles, but whether it is laid upon an exporting business as such. If it were otherwise, and if the carrying of an article exempted from taxation under this clause, also exempted the business of the carrier, then no tax could be imposed by either the United States or any State upon any of the principal railroad companies in the country, as all the main lines are daily engaged in carrying commerce which has been consigned to foreign ports to the seaboard for shipment; and while being so carried such commerce, if being technically exported, is certainly "in the way of exportation" as suggested in Turpin *v.* Burgess, 117 U. S. 508.

The question here under consideration should be carefully distinguished from that involved in the numerous cases in which taxes either direct or indirect, imposed by States, have been held unconstitutional under that clause which vests power in Congress to regulate commerce with foreign nations among the several States and with the Indian tribes. According to numerous decisions of the Supreme Court of the United States, this clause prohibits the State from interfering by any character of legislation with interstate commerce; and hence, any taxation which places a burden upon that commerce, and interferes therewith, is unlawful, regardless of whether it be a tax laid upon the transportation of the subjects of commerce, or upon the receipts derived from that transportation, or upon the occupation or business of carrying it on. This is not true, however, as to the clause here in question. For a tax to be violative of this clause it must be imposed upon the exported article, and the courts have never gone further than to hold that it is so imposed, within the spirit of this clause, when the tax may be directly traceable to such article as an export.

There appears another reason why these companies cannot escape this tax. In Aguirre *v.* Maxwell, 3 Blatchf. 140, it was insisted that a tonnage tax upon a foreign vessel was contrary to this provision of the Constitution; but the court held:

"It is within the discretion of Congress to totally inhibit the import or export trade in foreign vessels to or from our ports, or to grant them the privilege of bringing in or carrying out cargoes on such conditions and under such regulations as may be regarded most beneficial to the United States."

And the tonnage tax remains to this day on our statute books, the last enactment being section 36 of the act of which the law under consideration is section 38. If the tax upon the tonnage, that is, the carrying capacity of the vessel, is not a tax upon the merchandise it carries, then it cannot be perceived how a tax "with respect to the carrying on or doing business" by the owners of the vessels can be a tax on such merchandise. Certainly the latter tax is further removed from the merchandise than the former. And if the owner of the foreign vessel can be made to pay a tax on his business, when such business consists entirely in the transportation of passengers and merchandise in foreign vessels.

I am of the opinion, therefore, that the steamship companies in question are corporations subject to the excise tax created by section 38 of the Act of August 5, 1909."

Sec. 41. Meaning of Phrase, "Engaged In Business In the United States." — The phrase "engaged in business in the United States" is one which appears in substantially the same form in most of those statutes of the several States imposing a franchise or other permit tax upon all corporations engaged in business in a particular State, but organized under the laws of some other State than that wherein the particular business so taxed is carried on. Such State legislation has called for a great deal of interpretation from the several State courts, and has at the present time a very well understood meaning. This meaning can best be arrived at by deducing from the various decisions bearing on this subject such rules as commend themselves to one's judgment as being based upon sound legal reasoning and generally supported.

Sec. 42. Rules for Determining Whether a Foreign Corporation Is Engaged In Business In the United States. — 1. In order to "engage in business within the United States" it is not indispensable that a foreign corporation should do the greater part of its business therein. If it does any part of its ordinary business therein, it may be said to engage in business in the United States within the meaning of the Federal Corporation Tax Law.

2. Generally speaking, the making of a single isolated contract within the United States is not a sufficient foundation upon which to predicate a statement that a foreign corporation is engaged in business within the United States. There must be more or less continuity in the matter. (Cooper Mfg. Co. *v.* Ferguson, 113 U. S. 727, 5 Sup. Ct. Rep. 739, 28 L. E. 1137.) Foreign steamship companies, having no office in the United States, whose vessels only touch at ports in the United States, are not to be regarded as doing business in this country within the meaning of the statute. (T. R. March 29, 1910, No. 1606, see Appendix K.)

3. The institution and prosecution of actions in the courts of the United States does not of itself constitute engaging in business in the United States.

4. Foreign corporations may take mortgages by way of investment, or as security for debts, or may take real estate as security

for debts without thereby becoming engaged in business within the United States within the meaning of the Federal Corporation Tax Law, provided the doing of such acts is not within the express purpose for which such corporations were created; as for example, where they are engaged in the mortgage, loan or real estate business.

5. Where foreign corporations consign merchandise to persons in the United States for purposes of sale, and sales are made thereof by the vendor in his own name and the proceeds collected by him, such foreign corporations cannot, by reason thereof, be treated, as having engaged in business in the United States within the meaning of the Federal Corporation Tax Law.

6. A foreign corporation may transact business within the United States through the medium of a domestic operating company, incorporated here for that purpose, without subjecting itself to the payment of the federal corporation tax, as being engaged in business within the United States. (People *v.* Am. Bell Tel. Co., 117 N. Y. 241, 22 N. E. 1057; People *v.* Kelsey, 101 App. Div. 205, 91 N. Y. Supp. 709.

CHAPTER V.

TAX RETURNS.

Sec. 43. Tax Returns — General Provisions In Relation Thereto. — Section 3 of the Federal Corporation Tax Law (lines 9 to 95) provides that on or before the first day of March of each year all corporations, joint stock companies or associations and insurance companies subject to the operation of the Federal Corporation Tax Law, shall make a true and correct return in such form as the commissioner of internal revenue, with the approval of the Secretary of the Treasury, shall prescribe.

In this connection attention is called to certain rules and regulations issued by the commissioner of internal revenue, with the approval of the Secretary of the Treasury. The ones to which special attention is directed are the following (T. D. August 21, 1909, No. 1534, see Appendix B.):

Attention is specially called to section 38 of the Act of August 5, 1909, imposing on certain corporations, joint stock companies, associations and insurance companies a special excise tax to be paid annually.

In view of the large number of corporations, companies and associations subject to this tax, collectors of internal revenue will, on receipt of this circular, at once proceed to thoroughly canvass their districts, and as soon as possible furnish this offiffice with a list of all such corporations, companies and associations organized in their districts, setting forth the amount of capital stock and principal place of business of each. They will also furnish a separate list of all corporations, companies and associations organizezd elsewhere (including such as are organized under the laws of a foreign country) having their principal place of business in the district where such list is prepared. Duplicates of such lists will be made by each collector, one copy thereof to be retained in his office, and the other, when completed, forwarded to the Commissioner of Internal Revenue. Blanks to be used in such cases will be furnished collectors; and, for statistical purposes and convenient reference, all such corporations, companies and associations will be classified and listed according to the nature of the business carried on as follows:

Class A — Financial and commercial. — Including banks, banking associations, trust companies, guaranty and surety companies, title insurance com-

panies, building associations (if for profit) and insurance companies, not specifically exempt.

Class B — Public service. — Such as railroads, steamboat, ferryboat and stage line companies, pipe lines, gas and electric light companies, express, transportation and storage companies, telegraph and telephone companies.

Class C — Industrial and manufacturing. — Such as mining, lumber and coke companies, rolling mills, foundry and machine shops, sawmills, flour, woolen, cotton and other mills; manufacturers of cars, automobiles, elevators, agricultural impliments, and all articles manufactured wholly or in part from metal, wood, or other material, manufacturers or refiners of sugar, molasses, sirups, or other products, ice and refrigerating companies, slaughter house, tannery, packing or canning companies, etc.

Class D — Mercantile. — Including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares and merchandise.

Class E — Miscellaneous.— Such as architects, contractors, hotel, theatre or other companies, or associations not otherwise classed.

When classified as above indicated the names of the various corporations, companies and associations will be listed alphabetically, and will be numbered consecutively (commencing with No. 1 in each class) and in forwarding returns or papers subsequently rendered or submitted by such corporations or companies collectors will see that the same have placed thereon the designating class letter and number corresponding with those noted on the lists herein required to be furnished.

Every corporation, etc., not specifically enumerated, as exempt, shall make the return required by law, although its net income during the year may not have exceeded $5,000. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Where a consolidation of two or more corporations has been effected during the year, and each or any such corporation subsequent to such consolidation collects prior existing debts, each such corporation should make a separate return and include thereon all such collected debts, as also all income received during the year prior to the date of consolidation. (T. R. March 29, 1910, No. 1606, see Appendix K.) As the law specifically provides that the tax imposed shall be computed on the net income during each calendar year, returns of income based on any period other than the calendar year cannot be accepted. (T. R. March 29, 1910, No. 1606, see Appendix K.)

No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations, etc., must be so recorded that each and every item therein set forth may be readily verified by an examination of the

books and accounts where such examination is deemed necessary. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 44. Inventories. — The commissioner of internal revenue has recognized that in the case of many classes of corporations inventories are absolutely essential in order to fill out properly the return prescribed by the Treasury Department. In this connection, attention is called to the following regulations promulgated by the commissioner of internal revenue (T. R. December 3, 1909, No. 31, see Appendix C.):

It will be noted that an inventory or its equivalent of materials, supplies and merchandise on hand for use or sale at the close of each calendar year is essential in the case of certain corporations in order to determine the gross income, and in case of other corporations to determine their expenses of operation. Where such inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental statement shall be verified under oath by the treasurer or principal financial officer in submitting the same.

Where any item under any of the deductions is of an unusual nature a special explanatory note referring to such item shall be made and attached to the form at the appropriate place and made a part thereof by proper reference.

Paragraph 3 of said section 38 also provides:

"and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president or other principal officer, and its treasurer or assistant treasurer shall be made by each of the corporations, joint stock companies or associations, and insurance companies subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of Treasury, shall prescribe."

Each return so made is required to set forth:

(a) The total amount of the paid-up capital stock of such corporations, joint stock companies or associations, or insurance companies outstanding at the close of the year;

(b) The total amount of bonded and other indebtedness of such corporation, joint stock company or association, or insurance company, at the close of the year;

(c) The gross amount of the income of such corporation, joint stock company or association or insurance company, received during the year from all sources, and if organized under the laws of a foreign country, the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska and the District of Columbia.

Such returns are also required to set forth the items claimed as deductions (article 4), also the net income after such deductions have been made. (T. R. Dec. 3, 1909, No. 31.)

Calendar year.— As the law specifically provides that the tax imposed shall be computed on the net income during each "calendar year," returns of income based on any period other than the calendar year cannot be accepted.

Corporations organized during the year or going into liquidation during the year should nevertheless render a sworn return on the prescribed form. (T. R. Dec. 3, 1909, No. 31.)

The commissioner of internal revenue in his bulletin, dated January 4, 1910 (T. D. 1578, see Appendix D.), made the following ruling relative to the period to be covered by the tax returns:

In order that the position of this office may be known to all interested in this subject, attention is invited to the language of the act bearing on this point. Subdivision 3 reads in part as follows:

". . . and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter."

From this it will be seen that the law fixes the calendar year as the period to be covered by these returns, and no one is vested with discretionary power to change it.

In the ruling made by the commissioner of internal revenue under date of January 4, 1910 (No. 1578, see Appendix D.), the following rule was laid down relative to the manner of arriving at an inventory, to wit:

Many inquiries have been submitted to me as to the manner of arriving at an inventory January 1, 1909, where none was taken on that date, and where the fiscal year of the corporation ends with a date other than December 31.

In article 5 of Regulations No. 31, it is stated that an inventory or its equivalent of materials, supplies and merchandise on hand for use or sale at the close of each calendar year is essential in the case of certain corporations in order to determine the gross income, and in case of other corporations to determine their expenses of operation. Where such inventory or its equivalent was taken at the close of the year 1908, a supplemental statement, showing such inventory approximately, must be submitted with return on the regular form. Such supplemental statement shall be verified under oath, etc.

Under the statute no return for a period other than the calendar year can be accepted. The primary object to be kept in view is the preparation of a statement or return which shall correctly set forth the net income taxable under the law. If this can be accomplished without the necessity of an inventory, either at the beginning or the close of the calendar year, actual inventories are not necessary. If, however, a statement, such as may be verified by oath of the officers of the corporation, showing the net taxable income, cannot be made without an inventory, then the same is necessarily required.

It is believed that corporations whose business is of sufficient volume to produce a taxable income under this law would ordinarily keep such books as would enable them to arrive at a book inventory, or what might be termed the "equivalent" or an inventory for the period between the 1st of January and the end of their fiscal years. While the office is unable to set forth any rule in this connection for arriving at inventories or their equivalents, the corporations will readily see the necessity of resorting to the best means at their hands to show in their sworn returns their net taxable income.

Under date of January 24, 1910 (T. D. 1588, see Appendix F.), the commissioner of internal revenue issued a bulletin reading as follows, to wit:

Sir. — Your letter dated the 19th instant has been received, in which you ask certain questions relative to making returns under the provisions of section 38, Act of August 5, 1909. You state:

"In the first place, relative to a manufacturing company, in your paragraph 3 on page 8 of the laws and regulations, you say: 'Cost of goods manufactured shall be ascertained by the addition of a charge to the account of the cost of goods as manufactured during the year of the sum in the inventory at the beginning of the year.' Does this mean that the cost must be ascertained from the price of the raw materials and the amount of labor expended, irrespective of overhead charges, or should overhead charges be included in the cost, and should the addition then be made to the total net worth of the concern as shown by the inventory of the previous year and that subtracted from the net worth of the concern at the end of the year; or in what way is this section construed?"

In reply you are advised that for the purpose of making a correct return in accordance with the provisions of section 38 of the Act of August 5, 1909, it is necessary to follow closely the well-established commercial rules for keeping the accounts of the business of manufacturers. In keeping such accounts in a scientific manner it is well understood by all bookkeepers that if an inventory is taken on December 31, the end of the calendar year, the credits entered as balances in the several ledger accounts show the assets that such corporation has on hand, and hence the instructions in "Note A" at the bottom of the printed Form 637 state that "the cost of the goods manufactured shall be ascertained by an addition of a charge (debit) to the account of the cost of the goods as manufactured during the year of the sum of the inventory at the beginning of the year." All credit balances above referred to are transferred to the debit side of such accounts when the same are reopened on commencing business in the first of the year, and the "addi-

tion of a charge," as noted above, is thus made to the several accounts that are debited with the cost of goods manufactured during the year. The credit to the account is then made at the close of the year when the inventory is taken.

Capital stock is held to include preferred and common stock. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 45. Content of the Return. — The return shall set forth:

(First) The total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company, or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association or insurance company, received during such year from all sources, and if organized under the laws of a foreign country, the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska and the District of Columbia; also, the amount received by such corporation, joint stock company or insurance company within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and property of such corporation, joint stock company or association, or insurance company within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to and continued use or possession of property, and if organized under the laws of a foreign country, the amount so paid in the maintenance and operation of its business within the United States and its territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of corporation, joint stock company or association or insurance company organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or

insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association or insurance company organized under the laws of a foreign country, interest so paid on its bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory of the United States, or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue. (See Appendix A, par. 3, lines 24 to 95.)

In his bulletin issued January 24, 1910 (T. D. 1588, see Appendix F.), the commissioner of internal revenue made the following rules:

1. That the return shall show the gross income (profit) received during the year, which is reported in item 3 on form 637.

2. All the necessary expenses in the maintenance and operation of the business and properties, which include labor, fuel, rentals, insurance, etc., shown in item 4.

3. Losses sustained during the year and not compensated by insurance, or otherwise, including a reasonable allowance for depreciation, shown in item 5 a and b.

4. Interest on bonded or other indebtedness to an amount not exceeding the paid-up capital stock, shown in item 6.

5. All sums imposed for taxes during the year, shown in item 7.

6. All amounts received by it as dividends upon stock of other corporations, etc., subject to the tax imposed, as shown in item 8.

To make a correct return it is necessary for the accountant to know:

1. The exact resources and liabilities of the corporation, both on January 1 and December 31 of the year covered by the same.

2. A full statement of the business transacted during the year.

Full amount of stock, as represented by the par value of the shares issued, to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation. (T. R. No. 1606, March 29, 1910, see Appendix K.)

Where an inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental state-

ment shall be verified under oath by the treasurer or principal financial officer submitting the same. (T. D. No. 1578, see Appendix D.; T. R. March 29th, 1910, No. 1606, see Appendix K.)

Bookkeeping. — No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations, joint stock companies, associations or insurance companies must be so recorded that each and every item therein set forth may be readily verified by an examination of the books and accounts, where such examination is deemed necessary. (T. D. No. 1571, Dec. 3, 1909, see Appendix C.)

Sec. 46. The Return — By Whom Made. — The return must be made in each case by the "president, vice-president or other principal officer, and the treasurer or assistant treasurer of the corporation, joint stock company or association making the same." The phrase "other principal officer," as here used, undoubtedly means the executive head of the corporation, joint stock company or association making the return, whether the same be known as a president or vice-president, or by any other name. Just so long as the officer making the return is the executive head of the organization, that is sufficient.

It should be noted that in every instance the return must be made by at least two officers, one of whom is the executive head of the company making the return, while the other has charge of its finances, and is therefore supposed to be conversant with its financial conditions.

The following rules, relative to the return, were made by the commissioner of internal revenue, in his bulletin issued under date of March 29 (T. R. No. 1606, see Appendix K.), to wit:

6. Where a corporation has gone into bankruptcy, returns in such case to be made by trustee in bankruptcy.

10. Foreign companies having several branch offices in the United States should also designate the proper officers to make the required return.

33. Returns should be signed and verified by two of the officers designated in the law. Signing of one person holding two such offices not permitted. Agents for foreign steamship companies may sign the required returns, if so authorized by their companies.

34. Returns not required to have corporate seal affixed.

35. Returns filed with deputy collector regarded as having been filed with collector.

Sec. 47. The Return — Where to Be Made. — In the practical operation of the act some confusion has arisen in determin-

ing in what revenue district the returns for the purpose of complying with the terms of the Federal Corporation Tax Act should be made. The return must be made to the collector or deputy revenue collector within the district wherein is located the principal place of the business of the corporation, joint stock company or association making the return. (Act, section 3, lines 11–19.)

Under the ruling of the commissioner of internal revenue, the company's principal place of business is held to mean the principal office where the company keeps its books from which the required return is to be prepared, and in the place where the operating plant is located. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 48. Verification of Return. — The return must be accompanied in every instance by either the oath or the affirmation of both the executive head of the company making the return and that of its treasurer or assistant treasurer. The form of the verification, as prescribed by the commissioner of internal revenue, with the approval of the Secretary of the Treasury, is as follows:

STATE OF..... } *ss.:*
COUNTY OF..... }

....., President (vice-president) (here name some executive officer having executive powers) and ....., Treasurer (or assistant treasurer) of the ..... corporation (company or association) whose return of annual net income is set forth above, being separately duly sworn (or, of the officers are to affirm, the verification should read as follows) (doth each severally affirm) and each for himself and each deposes and says, that the foregoing report of the several items therein set forth, are, to his best knowledge and belief, and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income without any deductions whatsoever received from all sources by the said corporation during the year preceding and that the net income therein set forth is the full amount upon which the tax is proper to be assessed.

.....
President.

.....
Treasurer.

Sworn and subscribed to before me }
this .. day of ....., 191 . }

.....
Notary Public.

(Notarial Seal.)

Sec. 49. Tax Returns from Insurance Companies. — Under the regulations established by authority of the Federal Corporation Tax Law by the commissioner of internal revenue, with the approval of the Secretary of the Treasury, all insurance companies must make a return in substantially the following form: (See Appendix U.)

FORM No. 634.

To be filled in by Collector.	To be filled in by Internal Revenue Bureau.
List No.....	Assessment List .....19....
Class.....	Page ..... Line .....
.....District of.....	Date Received ..... 19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Insurance Companies.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ....., in the State of .....

1. Total amount of paid-up stock outstanding at close of year. $.....
2. Total amount of bonded or other indebtedness outstanding at close of year..... .....
3. Gross income ....

(The gross income shall consist of the total of the gross revenue derived from the operation and management of its business and properties, together with all amounts of income, including dividends on stock of organizations to this special excise tax from other sources as shown by the entries on its books from January 1 to December 31 of the year for which return is made.)

DEDUCTIONS.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation ....

(The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books from January 1 to December 31.)

5. (*a*) Total amount of losses sustained January 1 to December 31..... $.....

(*b*) Total amount of depreciation January 1 to December 31..... .....

(*c*) Total amount other than dividends paid within the year on policy and annuity contracts	$.....	
(*d*) Total amount of net addition required by law to be made within the year to reserve fund	.....	
Total		$.....

(The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books from January 1 to December 31.)

6. Total amount of interest January 1 to December 31 on bonded indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note to No. 5.)	.....
7. (*a*) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof	$.....
(*b*) Foreign taxes paid	.....
Total (See Note to No. 5)	.....
8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations and insurance companies, subject to this tax	.....
Total Deductions	$.....
9. Net Income	$.....
10. Specific deductions from net income allowed by law	$5,000 00
11. Amount on which tax at one per centum is calculated for assessment	$.....

(Verification, as provided in section 46.)

(This form, properly filled out and executed, must be in the hands of the collector of internal revenue for the district in which is located the principal office of the corporation making the return on or before March 1.)

Sec. 50. Tax Returns From Banks and Financial Institutions. — Under the regulations established by authority of the Federal Corporation Tax Law by the commissioner of internal revenue, with the approval of the Secretary of the Treasury, all banks and financial institutions must make a return in substantially the following form. (See Appendix W.)

FORM No. 635.

To be filled in by Collector.
List No.....
Class.....
.....District of.....

To be filled in by Internal Revenue Bureau.
Assessment List .....19....
Page ..... Line .....
Date Received ..... 19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Banks and Other Financial Institutions.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ....., in the State of .....

1. Total amount of paid-up stock outstanding at close of year. $.....
2. Total amount of bonded or other indebtedness outstanding at close of year..... .....
3. Gross Income ....
(Gross income shall consist of the total amount of gross revenue derived from the operation and management of its business and properties, together with all amounts of income, including dividends on stock of other corporations, joint stock companies and associations subject to this tax derived from all sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.)

DEDUCTIONS.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation..... .....
(The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which return is made.)

5. (a) Total amount of losses sustained January 1 to December 31..... $.....
(b) Total amount of depreciation January 1 to December 31 ....
(See Note to No. 4.)

6. (a) Total amount of interest January 1 to December 31 on bonded or other indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note to No. 4)..... .....

(*b*) Total amount of interest paid within the year on deposits ....
Total (See Note to No. 4) ....
7. (*a*) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof ..... $.....
(*b*) Foreign taxes paid..... .....
Totals (See Note to No. 4) ....
8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations and insurance companies subject to this tax..... $.....
9. Net Income ....
10. Specific deduction from net income allowed by law..... $5,000 00
11. Amount on which tax at one per centum is to be calculated for assessment ..... $.....

(Verification as in section 48.)

(This form, properly filled out and executed, must be in the hands of the collector of internal revenue for the district in which is located the principal office of the corporation making the return on or before March 1.)

Sec. 51. Tax Returns From Transportation Corporations. — Under the regulations established by authority of the Federal Corporation Tax Law by the commissioner of internal revenue, with the approval of the Secretary of the Treasury, all transportation companies must make a return in substantially the following form: (See Appendix X.)

FORM No. 636.

To be filled in by Collector.	To be filled in by Internal Revenue Bureau.
List No.....	Assessment List .....19....
Class.....	Page ..... Line .....
.....District of.....	Date Received ..... 19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Transportation Corporations.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ....., in the State of .....

1. Total amount of paid-up stock outstanding at close of year. $.....

2. Total amount of bonded or other indebtedness at close of year . . . . . .

3 Gross income . . . . . .

(Gross income shall consist of gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint stock companies and associations subject to this tax) derived from all sources as shown by the entries on its books from January 1 to December 31 of the year for which the return is made.)

DEDUCTIONS.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation . . . . . .

(The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which return is made.)

5. (*a*) Total amount of losses sustained January 1 to December 31 . . . . . $. . . . . .

(*b*) Total amount of depreciation January 1 to December 31 . . . .

Total (See Note to No. 4) . . . . . .

6. Total amount of interest January 1 to December 31 on bonded indebtedness to an amount not to exceed the amount of paid-up capital at close of year (See Note to No. 4.) . . . . . .

7. (*a*) Total taxes paid January 1 to December 31 imposed under authority of the United States or any State or Territory thereof . . . . . $. . . . . .

(*b*) Foreign taxes paid . . . . . .

Total (See Note to No. 4.) . . . . . .

8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax . . . . . .

Total deductions . . . . . $. . . . . .

9. Net income . . . . . .

10. Specific deductions from net income allowed by law $5,000 00

11. Amount on which tax at one per centum is to be calculated for assessment . . . . . $. . . . . .

(Verification as in Section 48.)

(This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the District in which is located the principal office of the corporation making the return, on or before March 1.)

Sec. 52. Tax Returns From Manufacturing Corporations. — Under the regulations established by authority of the Federal Corporations Tax Law by the commissioner of internal revenue, with the approval of the Secretary of the Treasury, all manufacturing corporations must make a return in substantially the following form: (See Appendix Y.)

FORM No. 637.

To be Filled in by Collector.	To be Filled in by Internal Revenue Bureau.
List No.....	Assessment List .....19....
Class.....	Page .....Line .....
.....District of.....	Date Received, ...19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress approved August 5, 1909.)

Manufacturing Corporations.

RETURN OF NET INCOME received during the year ending December 31, 19... by ....., a corporation, the principal place of business of which is located at ..... in the State of .....

1. Total amount of paid-up stock outstanding at close of year. $.....
2. Total amount of bonded or other indebtedness outstanding at close of year..... .....
3. Gross income . . ..

(The gross income received during the year from all sources shall in the case of a manufacturing corporation consist of the total amount ascertained through an accounting that shows the difference between the price received for the goods as sold and the cost of such goods as manufactured. The cost of goods manufactured shall be ascertained by an addition of a charge to the account of the cost of goods as manufactured during the year of the sum of the inventory at the end of the year. To this amount should be added items of income received during the year from other sources, including dividends received on stock of other corporations, joint stock companies, and associations subject to this tax. In the determination of the cost of goods manufactured and sold as above such cost shall comprehend all charges for maintenance and operation of manufacturing plant, but shall not embrace allowances for depreciation or losses, which items shall be taken account of under the proper heading above as a deduction.)

DEDUCTIONS.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation		.....
(The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which return is made.)		
5. (a) Total amount of losses sustained January 1 to December 31	$.....	
(b) Total amount of depreciation January 1 to December 31	.....	
Total (See Note to No. 4)		.....
6. Total amount of interest January 1 to December 31 on bonded and other indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note to No. 4)		.....
7. (a) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof	$.....	
(b) Foreign taxes paid	.....	
Total (See Note to No. 4)		.....
8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax		.....
Total Deductions	$.....	
9. Net income		.....
10. Specific deduction from net income allowed by law		$5,000 00
11. Amount on which tax at one per centum is to be calculated.		.....

(Verification as in section 48.)

(This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the District in which is located the principal office of the corporation making the return, on or before March 1.)

Sec. 53. Tax Returns From Mercantile Corporations.— Under the regulations established by authority of the Federal Corporation Tax Law by the commissioner of internal revenue, with the approval of the Secretary of the Treasury, all mercantile corporations must make a return in substantially the following form: (See Appendix Z.)

FORM No. 639.

To be Filled in by Collector.	To be Filled in by Internal Revenue Bureau.
List No.....	Assessment List .....19....
Class.....	Page .....Line .....
.....District of.....	Date Received, ...19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 31, Act of Congress, approved August 5, 1909.)

Mercantile Corporations.

(Corporations whose principal business is buying and selling.)

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ..... in the State of .....

1. Total amount of paid-up stock outstanding at close of year. $.....
2. Total amount of bonded or other indebtedness outstanding at close of year ....
3. Gross Income ....

(The gross amount of income received during the year from all sources shall in the case of a mercantile corporation consist of the total amount ascertained through inventory or its equivalent, which shows the difference between the price received for goods sold and the cost of goods purchased during the year, with an addition of a charge to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint stock companies and associations, subject to this tax. In determining this amount no account shall be taken of allowances for depreciation or losses, which items shall be taken account of under the proper heading above as a deduction.)

DEDUCTIONS.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation..... .....

(The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which return is made.)

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5. (a) Total amount of losses sustained January 1 to December 31	$.....	
(b) Total amount of depreciation January 1 to December 31	.....	
Total (See Note to No. 4)		.....
6. Total amount of interest January 1 to December 31 on bonded and other indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note to No. 4)		.....
7. (a) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof. . .	$.....	
(b) Foreign taxes paid	.....	
Total (See Note to No. 4)		.....
8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations and insurance companies subject to this tax		.....
Total Deductions		$.....
9. Net Income		.....
10. Specific deduction from net income allowed by law		$5,000 00
11. Amount on which tax at one per centum is to be calculated for assessment		.....

(Verification as in section 48.)

(This form, properly filled out and executed, must be in the hands of the collector of internal revenue for the district in which is located the principal office of the corporation making the return on or before March 1.)

Sec. 54. Tax Returns From Miscellaneous Corporations.— Under the regulations established by authority of the Federal Corporation Tax Law, by the commissioner of internal revenue, with the approval of the Secretary of the Treasury, all miscellaneous corporations must make a return in substantially the following form: (See Appendix AA.)

FORM No. 638.

To be Filled in by Collector.	To be Filled in by Internal Revenue Bureau.
List No.....	Assessment List .....19....
Class.....	Page .....Line .....
.....District of.....	Date Received and filed.....19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress approved August 5, 1909.)

Miscellaneous Corporations.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ..... in the State of .....

1. Total amount of paid-up stock outstanding at close of year. $.....
2. Total amount of bonded or other indebtedness outstanding at close of year ....
3. Gross Income ....
   (Gross income shall consist of the total of the gross revenue derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends on stock of other organizations subject to this special excise tax received, as shown by entries upon its books from January 1 to December 31 of the year for which return is made.)

DEDUCTIONS.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation ....
   (The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which return is made.)
5. (*a*) Total amount of loss sustained January 1 to December 31..... $.....
   (*b*) Total amount of depreciation January 1 to December 31 ....
   Total (See Note to No. 4)..... .....
6. Total amount of interest January 1 to December 31 on bonded indebtedness to an amount not to exceed the amount of paid-up capital at close of year..... .....
   (See Note to No. 4.)
7. (*a*) Total taxes paid January 1 to December ber 31, imposed under authority of the United States or any State or Territory thereof..... $.....
   (*b*) Foreign taxes paid..... .....
   Total (See Note to No. 4)..... .....

8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations and insurance companies subject to this tax.....	.....
Total Deductions	$.....
9. Net Income	.....
10. Specific deduction from net income allowed by law.....	$5,000 00
11. Amount on which tax at one per centum is to be calculated.	.....

(Verification as in section 48.)

(This form, properly filled out and executed, must be in the hands of the collector of internal revenue for the district in which is located the principal office of the corporation making the return on or before March 1.)

CHAPTER VI.

FUNDAMENTAL BASIS OF THE FEDERAL CORPORATION ACT.

Sec. 55. What Is the Fundamental Basis of the Federal Corporation Tax. — The fundamental and controlling principle to be observed in the practical operation of the federal corporation tax is that which treats the whole act as embodying an excise tax, the amount of which is measured by the income of the corporation, company or association subject to its terms.

In the words of the United States Supreme Court in Flint *v.* Stone Tracey & Company, 220 U. S. 107, "it is apparent that the tax is imposed not upon the franchises of the corporation, irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business with respect to the carrying on thereof in a sum equivalent to 1 per centum upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere to the peculiarities of corporate or joint stock organizations of the character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity."

Bearing this in mind, it next becomes proper to determine how the taxable income of such corporations, companies or associations is to be calculated. Before doing this it will be proper to lay a firm foundation for what is to follow, by defining the terms employed in the act, in pointing out the successive steps to be followed in order to ascertain the "net income" upon which the tax itself is levied.

First, let us obtain a legal definition of the term "income" as used in the act under discussion.

Sec. 56. Definition of Income. — The Federal Corporation Tax Law (paragraph 2, lines 1 to 28) provides that the net income upon which the excise tax itself is measured, shall be ascertained by making certain deductions (as enumerated in the act) from the gross amount of the income of the corporation, joint stock company or association, or insurance company against which the tax is assessed as the same may have been received within the tax year (January 1 to December 31), from all sources.

It will be seen that it is a matter of primary importance to obtain at the start an accurate and comprehensive definition of the word "income" as used in the act.

Income is the revenue received by the company from any source which originates through investment of its funds, or the utilization and exploitation of its capital in carrying on the particular business for which such company was organized or formed. The fair test to be employed in any case in determining whether certain funds received by the company are to be treated as income, within the meaning of the act is to ascertain whether such funds proceed from the investment or utilization of the capital of the company from whatsoever source derived.

Sec. 57. Meaning of the Phrase "Income Received" In Paragraph 2 of the Act. — There is no particular significance in the use of the word "received" as found therein. It simply serves to distinguish moneys which are due the company but not collected, from those which have been actually paid in. The regulations of the treasury department (No. 31, T. D. 1571, December 3, 1909, see Appendix C.) present certain definitions and rules for determining the gross income of the various classes of corporations. These briefly stated are as follows:

1A. Banks and other financial institutions. — Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, subject to this tax) derived from all other sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.

1B. Insurance companies. — Gross income consists of the gross revenue derived from the operation and management of the business and property of

the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint-stock companies, associations and insurance companies subject to this tax) derived from all other sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.

2. Transportation companies. — Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint stock companies, associations and insurance companies subject to this tax) derived from all other sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.

3. Manufacturing companies. — Gross income received during the year from all sources will consist of the total amount, ascertained through an accounting, that shows the difference between the price received for the goods as sold and the cost of such goods as manufactured. The cost of goods manufactured shall be ascertained by an addition of a charge to the account of the cost of goods as manufactured during the year of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint stock companies, associations and insurance companies subject to this tax. In the determination of the cost of goods manufactured and sold as above, such cost shall comprehend all charges for maintenance and operation of manufacturing plant, but shall not embrace allowances for depreciation of property, nor for losses sustained which are to be taken account of in ascertaining the net income subject to tax under the proper heading in the authorized deductions.

4. Mercantile companies. — Gross amount of income received during the year from all sources consists of the total amount ascertained through inventory, or its equivalent, which shows the difference between the price received for goods sold and the costs of goods purchased during the year, with an addition of a charge to the account of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, inclusive of dividends received on stock of other corporations, joint stock companies, associations and insurance companies subject to this tax. In determining this amount no account shall be taken of allowances for depreciation of property, nor for losses sustained, which are to be taken account of in ascertaining the net income, subject to tax under the proper heading in the authorized deductions.

5. Miscellaneous. — Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint stock companies, associations and insurance companies subject to this tax) derived from all other sources as shown by the entries on the books from January 1 to December 31 of the year for which return is made.

It will be noted from these definitions that gross income is practically the same as gross profits, the only difference being that gross income is more inclusive, embracing as it does not only gross profits of the corporation, joint stock company and association itself, but also all amounts of income received from other sources. It is immaterial whether any item of gross income is evidenced by cash receipts during the year or in such other manner as to entitle it to proper entry on the books of the corporation from January 1 to December 31 of the year for which return is made.

Sec. 58. Meaning of the Phrase "From All Sources" Found In Paragraph 2 of the Act. — The purpose of adding the words "from all sources" to the term "gross income" is to include therein not only such income as is derived from the ordinary and routine business of the company, but serves to include therein the income derived from investments, sale of capital assets and income received from property which in itself would be exempt from federal taxation.

On this general subject the United States Supreme Court in Flint *v.* Stone Tracey & Company, 220 U. S. 107, spoke as follows:

This tax, it is expressly stated, is to be equivalent to 1 per centum of the entire net income over and above $5,000 received from all sources during the year. This is the measure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies, or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source. This view of the measure of the tax is strengthened when we note that as to organizations under the laws of foreign countries the amount of net income over and above $5,000 includes that received from business transacted and capital invested in the United States, the Territories, Alaska and the District of Columbia.

It is further strengthened when the subsequent sections are considered as to deductions in ascertaining net income and requiring returns from those subject to the deductions from the gross amount of income received within the year "from all sources;" and the return to be made to the collector of internal revenue under the third section is required to show the gross amount of the income received during the year "from all sources." The evident purpose is to secure a return of the entire income, with certain allowances, and deductions, which do not suggest a restriction to income derived from property actively engaged in the business. This interpretation of the act, as resting

upon the doing business, is sustained by the reasoning in Spreckels Sugar Refining Co. *v.* McClain, 192 U. S. 397, in which a special tax measured by the gross receipts of the business of refining oil and sugar was sustained as an excise in respect to the carrying on or doing of such business.

Sec. 59. Classification of the Elements Which Go to Make Up the Gross Income of Corporations and Companies Subject to the Tax. — A general guide for determining the elements which go to make up the gross income of companies subject to the federal corporation tax can be found within that indicated upon the printed forms for return of annual net income prepared by the commissioner of internal revenue (see Appendix, forms U-Z), to wit:

The gross income shall consist of the total of the gross revenue derived from the operation and management of the company's business and properties, together with all amounts of income, including dividends on stock of other corporations, joint stock companies and associations subject to the tax, derived from all sources as shown by the entries on the company's books from January 1st to December 31st of the year for which the return is made."

A far better guide, however, is found in the bulletin of the commissioner of internal revenue under date of December 3, 1909 (T. R. 1571, see Appendix C), which reads as follows:

The following definitions and rules are given for determining the gross income of the various classes of corporations:

1A. Banks and other financial institutions. — Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint stock companies, associations and insurance companies subject to this tax) derived from all other sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.

1B. Insurance companies. — Same as 1A above.

2. Transportation companies. — Same as 1A above.

3. Manufacturing companies. — Gross income received during the year from all sources will consist of the total amount, ascertained through an accounting, that shows the difference between the price received for the goods as sold and the cost of such goods as manufactured. The cost of goods manufactured shall be ascertained by an addition of a charge to the account of the cost of the goods as manufactured during the year of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint stock companies, associations and

insurance companies subject to this tax. In the determination of the cost of goods manufactured and sold as above such cost shall comprehend all charges for maintenance and operation of manufacturing plant, but shall not embrace allowances for depreciation of property nor for losses sustained which are to be taken account of in ascertaining the net income subject to tax under the proper heading in the authorized deductions.

4. Mercantile companies. — Gross amount of income received during the year from all sources consists of the total amount ascertained through inventory, or its equivalent, which shows the difference between the price received for goods sold and the cost of goods purchased during the year, with an addition of a charge to the account of the sum of the inventory at beginning of the year. To this amount should be added all items of income received during the year from other sources, inclusive of dividends received on stock of other corporations, joint stock companies, associations and insurance companies subject to this tax. In determining this amount no account shall be taken of allowances for depreciation of property, nor for losses sustained, which are to be taken account of in ascertaining the net income subject to tax under the proper heading in the authorized deductions.

5. Miscellaneous. — Gross income consists of the gross revenue derived from the operation and management of the business and property of the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint stock companies, associations and insurance companies subject to this tax) derived from all other sources as shown by the entries on the books from January 1 to December 31 of the year for which return is made.

It will be noted from these definitions that gross income is practically the same as gross profits, the only difference being that gross income is more inclusive, embracing as it does not only gross profits of the corporation, joint stock company and association itself, but also all amounts of income received from other sources. It is immaterial whether any item of gross income is evidenced by cash receipts during the year or in such other manner as to entitle it to proper entry on the books of the corporation from January 1 to December 31 of the year in which return is made.

Sec. 60. Income From Business. — By "income from business" is to be understood all moneys received from the carrying on of the particular business for which the company subject to the tax was incorporated or organized. In this connection attention is called to the treasury department regulations (T. D. 1588) under date of January 24, 1910, see Appendix F.). Under the regulation here referred to the commissioner of internal revenue speaks as follows:

SIR. — Your letter dated the 19th instant has been received, in which you ask certain questions relative to making returns under the provisions of section 38, Act of August 5, 1909. You state:

In the first place, relative to a manufacturing company, in your paragraph 3 on page 8 of the laws and regulations, you say: "Cost of goods manufactured shall be ascertained by the addition of a charge to the account of the cost of goods as manufactured during the year of the sum in the inventory at the beginning of the year, and a credit to the account of the sum in the inventory at the end of the year." Does this mean that the cost must be ascertained from the price of the raw materials and the amount of labor expended, irrespective of overhead charges, or should overhead charges be included in the cost, and should the addition then be made to the total net worth of the concern as shown by the inventory of the previous year and that subtracted from the net worth of the concern at the end of the year; or in what way is this section construed?"

In reply, you are advised that for the purpose of making a correct return in accordance with the provisions of section 3 of the Act of August 5, 1909, it is necessary to follow closely the well-established commercial rules for keeping the accounts of the business of manufacturers. In keeping such accounts in a scientific manner it is well understood by all bookkeepers that if an inventory is taken on December 31, the end of the calendar year, the credits entered as balances in the several ledger accounts show the assets that such corporation has on hand, and hence the instructions in "Note A," at the bottom of the printed Form 637 state that "the cost of the goods manufactured shall be ascertained by an addition of a charge (debit) to the account of the goods as manufactured during the year of the sum of the inventory at the beginning of the year." All credit balances above referred to are transferred to the debit side of such accounts when the same are reopened on commencing business on the first of the year, and the "addition of a charge," as noted above, is thus made to the several accounts that are debited with the cost of goods manufactured during the year. The credit to the account is then made at the close of the year when the inventory is taken.

The provisions of the law require:

1. That the return shall show the gross income (profit) received during the year, which is reported in item 3 on Form 637).

2. All the necessary expenses in the maintenance and operation of the business and properties, which include labor, fuel, rentals, insurance, etc., shown in item 4.

3. Losses sustained during the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation, shown in item 5A and B.

4. Interest on bonded or other indebtedness to an amount not exceeding the paid-up capital stock shown in item 6.

5. All sums imposed for taxes during the year, shown in item 7.

6. All amounts received by it as dividends upon stock of other corporations, etc., subject to the tax imposed, as shown in item 8.

To make a correct return it is necessary for the accountant to know:

1. The exact resources and liabilities of the corporation, both on January 1 and December 31 of the year covered by the same.

2. A full statement of the business transacted during the year. For example: If a manufacturing corporation has on hand at the beginning of the year as resources, raw materials, in process, finished product, cash, bills re-

ceivable, accounts receivable, etc., making up the total assets of the company, a business transaction that results in exchanging these assets, or any part of them, for anything of equal value, does not produce income.

Raw materials, being of the capital assets of the company, are changed in form by the addition of different items of expense to produce another form of asset, the finished product, and hence the method of making up the return as follows: The gross income from the manufacturing business reported in item 3 consists of the difference between the cost of the assets as material and the selling price of the assets as finished product. The selling price of the finished product is ascertained as follows: The cost of the raw material plus all expenses shown in items 4, 5, 6 and 7, plus per cent. of profit, and while all these items of expense are as surely a part of the finished product as is the value of the raw material, yet as such items are expenses, and no assets, they are segregated and reported as deductions in items 4, 5, 6 and 7, in order to assist the government officer in his comparison and verification of the accuracy of the return.

In making up the gross income to be reported in item 3 the cost of the goods manufactured shall be ascertained by the addition of a charge to the account of the cost of the goods as manufactured during the year of the sum of the inventory at the beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations subject to this tax.

In making the inventory on December 31 of each year the appreciation or depreciation in the value of the raw material on hand should be ascertained, as well as that of the finished product, and this loss or gain, as the case may be, is included in the account of the closing calendar year. These articles, the raw material, material in process of manufacture, and the finished product, constitute at the beginning of the year succeeding the inventory the capital assets of the company, and hence under the rule in paragraph 2, page 9, of Regulation 31, any increase or decrease in value accruing at a time prior to January 1 of the calendar year for which return is made cannot be taken as a part of the gross income for that year, but, as noted above, such increase or decrease in value should be included in the account of the prior calendar year.

The rules, as hereinbefore stated, relative to manufacturing corporations, also apply to mercantile corporations, and it is not at all material in making a return for the year 1909, if, as you state, the goods were purchased prior to that time. On January 1, 1909, the goods referred to constitute capital assets at the invoiced value, and only the profits on the same, if sold during the year, are taken as gross income, or if not all sold during the year, gross income is found by an addition to the credit side of the account of the sum of the inventory at the close of the year.

When a book account is shown to be worth less than its face value, and the loss is evidenced by an entry on the debit side of the loss and gain account in the books of the corporation, thereby decreasing the gross profit during the year, the amount of such loss is a proper deduction in item 5 of the return.

The making of an accurate return in accordance with the law and the

regulations should present no difficulties to an expert bookkeeper and accountant who has made a careful study of the subject.

Respectfully,

ROYAL E. CABELL,
Commissioner.

The commissioner of internal revenue has taken the position (Internal Revenue Regulations, December 31, 1909, article 2, sec. 5) that it is immaterial whether an item of gross income is evidenced by cash receipts during the year, or in such other manner as to entitle it to proper entry on the books of the corporation from January 1 to December 31 of the year in which the return is made.

Sec. 61. Income From Investment. — Under the instructions issued by the commissioner of internal revenue (see forms, return of annual net income, Appendix Nos. U-Z) the income received by a company from investment of its capital outside of the immediate operation of its business must be included in the term "gross income."

Stock issued in payment of property purchased represents a capital investment. (Treasury Regulations, T. D. 1606, March 29, 1910, see Appendix K.)

Sec. 62. Income From Capital Invested In Personal Property. — Royalties on patent rights should properly be reported as income derived from capital invested in personal property. (T. D. March 29, 1910, No. 1606, see Appendix K.)

Sec. 63. Income From Real Estate. — Income from capital invested in real estate and not employed directly in the operations of the company, should be included in making up the amount of gross income of any company subject to the tax. Profits realized on sale of real estate during the year, as well as increase in the value of unsold property, should be included in making up the amount of the gross income. (T. D. March 29, 1910, No. 1606, see Appendix K.)

Receipts during the year from lands sold on the installment

plan should be included in making up the gross income in that particular year. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Mortgaged real estate should be inventoried at its full value and the amount of mortgage reported as indebtedness.

Sec. 64. Income From Sale of Capital Assets. — With respect to the sale of capital assets, the commissioner of internal revenue has issued the following bulletin: (T. R. 1571, December 3, 1909, see Appendix C.)

In ascertaining income derived from the sale of capital assets, if the assets were acquired subsequent to January 1, 1909, the difference between the selling price and the buying price shall constitute an item of gross income to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount of increment or depreciation representing the difference between the selling and buying price is to be adjusted so as to fairly determine the proportion of the loss or gain arising subsequent to January 1, 1909, and which proportion shall be deducted from or added to the gross income for the year in which the sale was made. But for the purpose of determining the selling price, as provided in this section, there shall be added to the price actually realized on sale any amount which has already been set aside and deducted from gross income by way of depreciation as defined in article 4 and has not been paid out in making good such depreciation on the property sold.

Where a corporation is engaged in carrying on more than one class of business, gross income derived from the different classes of business shall be ascertained according to the definitions above applicable thereto.

The receipts from sales of patent rights should be included in making up a statement of gross income. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 65. Income From Property Constitutionally Exempt From Federal Taxation. — On January 18, 1910, the commissioner of internal revenue issued the following bulletin: (T. D. 1583, see Appendix E.)

In view of the fact that the tax imposed by section 38 of the Act of August 5, 1909, is not upon the property or income of corporations, joint stock companies, etc., but is a special excise tax to be measured by the annual net income of such corporations, etc., it is held, conformably to the opinion of the honorable Attorney-General, to whom the question has been submitted.

That in computing the amount of the gross income corporations owning United States bonds should include the interest received thereon, and that such interest should not be deducted from the gross income for the purpose of ascertaining the net income, which serves as a basis for computing the amount of taxes to be paid.

The opinion of the Attorney-General here referred to was given under date of January 13, 1910, and reads as follows:

SIR. — I have the honor to acknowledge receipt of your communication of December 23, 1909, in which you request my opinion as to whether or not under section 38 of the Act of August 5, 1909 (36 Stat. 112), corporations subject to the tax provided for therein should include in the returns required to be made, as a part of their gross income, the interest on United States bonds held by them, and in reply thereto will say:

By section 38 of said Act it is provided: First, that the corporations specified therein "shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation . . . equivalent to 1 per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations," etc.; second, that the net income of a corporation shall be ascertained by deducting from the gross amount of the income: (First) The expenses described; (second) losses described; (third) interest paid on its indebtedness, not exceeding the paid-up capital, and in case of banking and trust companies, interest paid on deposits; (fourth) all sums paid within the year for taxes; and (fifth) amounts received within the year as dividends upon the stock of other corporations subject to the tax imposed; and third, that there shall be deducted from the net income of such corporation, ascertained as provided, the sum of five thousand dollars, and the tax shall be computed upon the remainder of said net income.

The tax here imposed is not a tax upon the property of the corporation, but is specifically designated as "a special excise tax with respect to the carrying on or doing business by such corporation." That is, it is in the nature of a tax imposed upon the privilege of carrying on the business; and the net income, ascertained as is described, was adopted by Congress only as a basis for computing what the amount of the assessment should be.

In the passage of this act, Congress doubtless had in mind the decision of the Supreme Court in the case of Pollock *v.* Farmers Loan and Trust Company, 157 U. S. 429, known as the income tax case; and it was no doubt its intention to avoid every character of taxation that might be regarded as a direct tax; and, consequently, it carefully avoided imposing a tax upon the property of the corporation, or upon its income, and fixed and designated it as a tax upon the carrying on or doing of its business.

Furthermore, the act is specific in its terms and enters into minute details with reference to how the net income of the corporation, for the purpose of fixing the amount of the tax, shall be computed; and this particularity necessarily excluded the intention that any other provision can, by implication, be read into the act.

I am, therefore, of the opinion that in computing the amount of the gross income, corporations owning United States bonds should include the interest received thereon, and that such interest should not be deducted from the gross income for the purpose of ascertaining the net income which serves as a basis for computing the amount of taxes to be paid.

Sec. 66. Income From Dividends On Stock Held In Other Companies. — In this connection attention is called to the opinion of the Attorney-General of the United States, rendered January 24, 1910, in which he had occasion to speak as follows:

SIR. — In reply to your communication of January 15, 1910, in which you ask my opinion whether under section 38 of the Act of August 5, 1909 (36 Stat. 112), known as the "corporation tax law," in computing its net income. a corporation may deduct from its gross income dividends received by it from another corporation of a class to which the act is applicable, but which does not have a net income to exceed $5,000, I have the honor to say:

Those parts of the Act which bear upon this question are as follows:

"That every corporation . . . shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: . . . Provided, however, that nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders or associations operating under the lodge system, and providing for the payment of life, sick, accident and other benefits to the members of such societies, orders or associations and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

"Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation . . . (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations or insurance companies, subject to the tax hereby imposed. . . .

"Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section. the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of said corporation . . . for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter . . ."

The question is whether or not a corporation whose net income does not exceed $5,000, and which, therefore, pays no tax under this statute, is a corporation "subject to the tax" thereby imposed within the meaning of the act.

When the language of the act is considered, together with the clear intent of those who drafted its provisions, I think there can be no doubt about the answer that should be given to this inquiry. The act expressly declares that every corporation of the kinds mentioned "shall be subject to pay annually a special excise tax," and then provides a method for the computation of the amount to be paid. Therefore, every one of such corporations falls within the provisions of the act, and must make out a report of its business, as therein required, and in every respect comply with its terms. It may turn out when the calculation is made on the basis specified that no tax will be assessed against it, not because the corporation is not subject to the tax, but because its earning capacity is not sufficient to necessitate its imposition for that year, just as every male person within certain ages may be subject to draft during the time of war, yet the conditions necessitating the draft may never arise.

This manifest meaning of the language is clearly in accord with the legislative intent. The purpose was to exclude $5,000 of a corporation's earnings from consideration in estimating the amount of taxes which it should pay, and further, that such $5,000 should remain exempt from such estimate though it should pass by way of a dividend into the hands of other corporations, just as it was the intention that when any part of a corporation's earnings had once entered into an estimate, as a result of which taxes were imposed, such sum should not again be considered in determining the amount to be paid by another corporation.

The effect of the contrary construction shows that such must have been the purpose of this provision. For, suppose a corporation holds 50 per cent. of the capital stock of two corporations, one of which has a net income of exactly $5,000, and declares a dividend of that amount, while the other has a net income of $5,500, which it disburses as dividends. According to the theory that the first of these dividend-paying corporations is not subject to this tax, while the second one is, the corporation holding their stock cannot deduct any part of the dividends received from the first corporation in estimated its net income, but can deduct of that received from the second one, not only the $250, the 50 per cent. of the excess over the $5,000, which was deducted from the gross income of such corporation, but also the $2,500, the 50 per cent. of the $5,000 deducted. That is, according to this theory, the $5,000 which must be deducted from a corporation's gross income cannot be deducted in the hands of other corporations which have received it as dividends when the first corporation has a net income of $5,000 or less, but it can be deducted if such corporation has a net income of over $5,000.

No such result was intended by Congress, and I am clearly of the opinion that the dividends received by a corporation as a stockholder of any other corporation of a character to which the act applies should be deducted from its gross income, regardless of the amount of the net income of such dividend-paying corporation.

Sec. 67. Income Received by a Company In a Representative Capacity. — It seems entirely clear from a careful reading of the act that funds received by a company, while acting in a purely representative capacity, are not to be included in estimating the gross income of such company.

Sec. 68. Income From Foreign Business and Foreign Investments. — The Federal Corporation Tax Law expressly provides that in estimating the tax, the net income of the company against which the tax is to be assessed shall be ascertained by deducting from the gross amount of the income of such company, as the same shall have been received within the year from all sources, the deductions pointed out in the act. The language here used in sufficiently broad to afford abundant support for the regulation of the commissioner of internal revenue (December 3, 1909, T. D. 1571, see Appendix C.) to the effect that the statement of income must include not only business carried on within the confines of the United States, but income received from business transacted in any foreign country as well. (See *post*, § 71.)

Sec. 69. Meaning of "Net Income." — Net income, by way of definition, must follow closely the meaning already given to the word 'income" as employed in the Federal Tax Enactment. It means the amount of income of the character already defined remaining after certain deductions are made from the amount of gross income in the manner pointed out in the act. Therein will be found clearly pointed out the method of calculating net income for the purpose of levying of the excise tax. It will be perceived on examination that the act makes provision, first, for ascertaining the net income of domestic companies; and second, for foreign companies.

Sec. 70. Manner of Ascertaining Net Income of Domestic Companies. — Section 2 (lines 1–28) of the Federal Corporation Tax Act provides the following method for ascertaining the net income of domestic corporations, to wit:

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association,

or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest ctually paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed.

Corporations having branch or subsidiary companies must include in their returns the income of all such companies. (T. D. March 29, 1910, No. 1606, see Appendix K.)

Sec. 71. Manner of Ascertaining Net Income of Foreign Companies. — Section 2 (lines 28–67) of the Federal Corporation Tax Act provides the following method for ascertaining the net income of foreign corporations, to wit:

Provided, that in the case of a corporation, joint stock company or association or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income as received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska and the District of Columbia: (First) All the ordinary and necessary evpenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges, such as rentals, or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, re-

quired by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded or other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States, or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds, shall be treated as being payments required by law to reserve funds.

Sec. 72. Are the Terms "Net Income" and "Net Profit" Identical In Meaning? — Under the arbitrary method prescribed in the Federal Corporation Tax Act for determining the net income of any company subject to the terms thereof, it may be stated with substantial accuracy that net income and net profits are identical in meaning. In Treasury Regulations No. 31 (December 3, 1909, see Appendix C.), attention is called to the fact "that gross income is practically the same as gross profits, the only difference being that gross income is more inclusive, embracing as it does, not only gross profits of the corporation, joint stock company and association, but also all amounts of income received from other sources. It is immaterial whether any item of gross income is evidenced by cash receipts during the year or in such other manner as to entitle it to proper entry on the books of the corporation from January 1 to December 31 for the year in which return is made." It follows as a logical conclusion that if gross profits are to be treated as equivalent to gross income, that net profits are accordingly to be regarded as substantially equivalent to net income.

Sec. 73. Are the Provisions of the Act as to the Method of Calculating Net Income of Companies Mandatory or Directory? — To answer this question reference must be had to the language of the act (section 2, lines 1–30) itself, which provides that such net income shall be ascertained in the particular method

set out in the act. The word "shall" as used in this immediate connection has under well-ascertained rules of statutory construction an identical meaning with the word "must," when followed by a statement of a particular method to be followed in ascertaining the net income of companies subject to the act which is to be so construed as to exclude all other methods than the one set out in the enactment itself. (Mason *v.* Fearson, 9 How. 248, 13 L. E. 125; *Re* Jordan, 94 U. S. 248; Minor *v.* Mechanics Bank, 1 Peters 46, 7 L. E. 47; Thompson *v.* Rowe Edem Carroll, 22 How. 422, 16 L. E. 387; Cairo & F. R. Co. *v.* Hecht, 95 U. S. 168, 24 L. E. 423.)

Sec. 74. Statutory List of Deductions to Be Made From Gross Income. — Paragraph 2 (lines 1–67) of the Federal Corporation Tax Law provides as follows:

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources: (First) All the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies, the sums other than dividends paid within the year on policy and annuity contracts and net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations or insurance companies, subject to the tax hereby imposed; Provided, that in the case of a corporation, joint stock company or association or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States, and any of its Territories, Alaska and the District of Columbia: (First) All the ordinary and necessary expenses actually paid within

the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska and the District of Columbia, including all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other thn dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded or other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds, shall be treated as being payments required by law to reserve funds.

With respect to deductions the treasury department in its bulletin of December 3, 1909 (T. R. No. 31, see Appendix C.) speaks as follows:

"The specified deductions actually paid within the year, set forth in the statute and as described in article 3 preceding, shall include all proper items of expenses and charged under the respective heads as designated. The amount returned for ordinary and necessary expenses actually paid within the year out of income in maintenance and operation of the business and properties of the corporation should not, however, embrace allowances for depreciation of fixed property which are otherwise to be taken account of under the proper heading in the authorized deductions, nor expenses paid within the year and charged to such allowances for depreciation credited in the current year or in previous years. In ascertaining expenses proper to be included in the deductions to be made under this article, corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which return is made.

It is immaterial whether the deductions are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly

acknowledged by the corporate officers and so entered on the books as to constitute a liability against the assets of the corporation, joint stock company, association or insurance company making the return.

The act further provides that there shall be deducted from the amount of the net income of each of the companies named in the act as being subject to the payment of the federal corporation tax, ascertained as prescribed above, the sum of $5,000. The net income, therefore, is the remainder of the gross income after making the foregoing specified deductions. (T. R. December 31, 1909, No. 31, see Appendix C.)

Sec. 75. Deduction of Expense of Maintenance of Business and Properties. — The act provides that the net income of any specific company shall be ascertained by deducting from the gross amount of the income of such company received within the year from all sources all the ordinary and necessary expenses actually paid within the year (from January 1 to December 31) out of income in the maintenance of its business and properties. The word "maintenance" as here used, does not include (according to the views of the treasury department, see Appendix I, sections 52, 53) moneys taken from the gross income of the company in the way of betterments of a plant, installation of new fixtures and machinery. Under the foregoing ruling any expenditures made from the gross income, which tend to keep up a particular plant to its normal requirements, as well as to enable it to meet the increasing and legitimate demands of a growing business, would not represent proper deductions as expenses. This, for the reason that betterments are required as additions to the capital assets of the company, while moneys expended in repairs are regarded as being offset by allowances for depreciation.

The treasury department has held, however, that the cost of erecting a building included in a lease under which the property is held by the company is a proper deduction to be prorated according to the time fixed by law. (T. R. March 29, No. 1606, see Appendix K.). But funds set aside by the company in insuring their own property are not regarded as a proper deduction. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 76. Deduction for Expense of Operation of Business and Properties. — Under the terms of the act, all ordinary and necessary expenses connected with the operation of business and property are a proper deduction. Thus, the treasury department holds that commissions allotted salesmen, even when paid in stock, may be deducted as expense of operation if so charged upon their books. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 77. Meaning of Ordinary Expenses. — Only those expenses actually paid are proper subjects for taxation (act, paragraph 2, line 5). In addition to requiring that the expenses shall have been actually paid, the act provides that such expenses must be part of the ordinary and necessary expenses. To permit of this being a basis for reduction an expense must be shown to be of this character.

Betterments and repairs are not proper deductions as expenses, the former being additions to the capital assets of the company, and the latter being offset by allowance for depreciation. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Cost of replacing old rails, structures, etc., not to be regarded as ordinary and necessary expenses. Depreciation during the year will be allowed, however, in such cases. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Dividends paid employees in lieu of wages not proper deduction as expenses. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 78. Meaning of Necessary Expenses. — An expense may be a necessary expense and a proper subject for deduction, but under the statute, not one of the ordinary expenses of the company. Pensions paid or gifts made to employees are gratuities, and not "ordinary and necessary expenses." (T. R. March 29, 1910, No. 1606, see Appendix K.)

Where allowances on account of salaries are deemed excessive, and for the purpose of evading the tax due, investigation will be made, and if the facts warrant, prosecution will follow. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 79. Meaning of Expenses Actually Paid Out of Income. — In order to be a proper subject for deduction, the expense must be paid out of income. In other words, the expense must be paid from revenue and not out of capital stock account. The treasury department, while holding that sales of stock and bonds are to be regarded as sales of capital assets has, nevertheless, held that proceeds derived from the sales of bonds used in deferring ordinary and necessary expenses are a proper deduction in determining the company's net income. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 80. What Are Proper Charges for Rentals or Franchise Payments? — The act permits the inclusion as operating expenses of all charges, such as rentals or franchise payments, required to be made as a condition to the continued use or possession of the property. Such charges as are here enumerated would seem to be both ordinary and necessary, and, therefore, the addition of this phrase would seem to have been made largely by way of definition rather than with any intention of enlarging the subject-matter of deductions themselves. The Attorney-General has rendered an opinion (February 21, 1910) to the effect that mortgage indebtedness on real estate, if assumed by the corporation acquiring such real estate may be included in the indebtedness of the corporation, but if it is not assumed, and remains only as a lien on the property, interest paid thereon may be deducted as a charge made as a condition to the continued use or possession of the property.

Sec. 81. Deduction for Losses. — All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and with insurance companies the sums other than dividends paid within the year on policy and annuity contracts, and the net additions, if any, required by law to be made within the year to reserve funds are proper deductions. (Act, section 2, lines 41–49.)

Sec. 82. Meaning of Losses. — Losses as used in the Federal Corporation Tax Act may be defined to embrace any transaction or things whereby the assets of the company have become thereby impaired. In the language of the treasury department, "the deduction for losses must be in respect of losses actually sustained during the year and not compensated by insurance or otherwise. It must be based upon the difference between the cost value and salvage value of the property or assets, including in the latter value such amount, if any, as has in the current or previous years been set aside and deducted from gross income by way of depreciation as defined in the following section and not been paid out in making good such depreciation."

It is immaterial whether the deductions are evidenced by actual disbursements in cash or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books as to constitute a liability against the assets of the corporation, etc., making the return.

Sec. 83. Meaning of Phrase "Losses Actually Sustained Within the Year." — The words "actually sustained" as herein used would seem to refer to liquidated liabilities and exclude contingent or possibe liabilities. In addition to the fact that the loss must be actually sustained, the act provides that it must have been sustained within the tax year which runs from January 1 to December 31.

Sec. 84. Condition That Losses Must Not Have Been Compensated By Insurance or Otherwise. — The purpose of inserting this particular exception from the general enumeration of deductions, is by way of recognition that a loss not only covered by insurance, but fully compensated by insurance, cannot properly be charged as a loss within the meaning of the act. It is somewhat difficult to know just what is meant by the word "otherwise" as used in the act (Act, paragraph 2, lines 9–11). The act reads "not compensated by insurance or otherwise." This might include, for example, a loss caused by embezzlement of a clerk, or by fire caused by explosion from an engine. In both of these cases

there might be a legal liability on the part of some third person not only to make good the amount of the loss and such loss might have been made good in either of the cases cited. This undoubtedly is the meaning of the word as used in the text of the act.

Sec. 85. Meaning of Reasonable Allowance for Depreciation of Property. — With respect to the character of the depreciation which has been made a subject for deduction, the treasury department has issued the following bulletins:

Depreciation. — The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed that arises from exhaustion, wear, and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation or in the ascertainment of gross income. This estimate should be formed upon the assumed life of the property, its cost value, and its use. Expenses paid in any one year in making good exhaustion, wear, and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expenses of maintenance and operation of the property or in the ascertainment of gross income, but must be made out of accumulative allowances deducted for depreciation in current and previous years. (T. R. Dec. 3, 1909, No. 31. See Appendix C.)

65. Unearned premiums set aside by insurance companies as reserve not to be included as income until earned.

70. Bad debts, if so charged off the company's books, during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income.

71. Where increase or decrease during the year in the value of real estate acquired in previous years, sold or held for sale, cannot be accurately determined, such increase or decrease may be prorated, as provided by regulations in cases of sale of capital assets.

72. Depreciation in value of mines by the removal of ore, if not otherwise ascertainable, may be prorated as in the case of sales of capital assets.

73. Depreciation in value of mines by the removal of ores, if in excess of five per cent. of investment, to be explained in return rendered.

74. Estimated depreciation in oil or gas wells, buildings, machinery, etc., to be stated in detail, if exceeding five per cent. of value as previously inventoried.

75. Corporations leasing mines and paying royalties on ore mined not entitled to deduction for depreciation. But corporations owning mines are entitled to allowance for depreciation based on fair estimate, etc.

76. Removal of timber from timber lands, while depleting the lands to the extent of such removal, is regarded as a change in the form of assets and not a depreciation within the meaning of the act.

77. Deductions on account of depreciation of property must be based on lifetime of property, its cost, value, and use.

78. Voluntary removal of buildings, etc., for purpose of improvements not regarded as loss or depreciation and no deduction therefor should be made.

79. Depreciation of company's stock a loss to the stockholders, not a loss to the company issuing the same, and therefore not a proper deduction. (T. R. March 29, 1910, No. 1606. See Appendix K.)

Sec. 86. Deduction By Insurance Companies — What Are Permissible? — Two additional deductions are permitted in the case of insurance companies. The first of these is that which permits sums, other than dividends paid by insurance companies within the year on policy and annuity contracts to be deducted. The other is that which permits assessment insurance companies to deduct the actual deposit of sums made by them with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds. These will now be taken up for separate consideration.

Sec. 87. Allowance for Sums Paid on Policy and Annuity Contracts. — Payments other than dividends, paid within the year on policies or annuity contracts, may be deducted by insurance companies in determining the amount of their net income. Such payments are to be treated as losses or fixed charges and as such are proper deductions.

Sec. 88. Allowance for Net Addition Required by Law to Be Made to Reserve Funds. — The right is given insurance companies in ascertaining their net income to deduct from their gross income among other items the amount, if any, *required by law* to be made within the year to reserve funds. This has reference unquestionably to such additions to this reserve, as may be compelled of an insurance company, by State officials acting under competent statutory authority in the premises.

Sec. 89. Deduction for Indebtedness. — Paragraph 2, lines 68–75, of the act provides as follows: "There shall be deducted interest actually paid within the year on its bonded or other in-

debtedness, to an amount of such bonded and other indebtedness, not exceeding the paid-up capital stock of such corporation, joint stock company or association or insurance company outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits." (Act, section 2, lines 15–22.)

Sec. 90. Deduction for Interest Actually Paid on the Bonded Indebtedness. — Interest on portions of bonded or other indebtedness bearing different rates of interest, may be deducted from gross income during the year, provided the aggregate amount of such indebtedness does not exceed the paid-up capital stock of the corporation. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Railroad companies operating leased or purchased lines to include all receipts derived therefrom, and if bonded indebtedness has been assumed, may deduct interest thereon to an amount not exceeding its paid-up capital stock. If such subsidiary companies receive income in the way of rentals, etc., return to be also made by such companies. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 91. Deduction for Interest Actually Paid On Indebtedness Other Than Bonded. — Interest paid during the year on notes given prior to January 1, 1909, to be prorated. But interest on notes given in 1909, and payable subsequent to December, 1909, unless charged on the company's books, is not a proper deduction from the income of that year. (T. R. No. 1609, March 29, 1910, see Appendix K., paragraph 63.)

Sec. 92. Limitation Upon the Allowance for Interest to the Effect That It Must Not Exceed Paid-Up Capital Stock of the Company Outstanding at the Close of the Year. — The words "capital stock," as used in the act, refer unquestionably to the amount of the authorized capital stock actually paid in to the treasury of the company. Under the provisions of the act all interest paid by the company within the preceding tax year may

be deducted, provided it is paid on an amount of company indebtedness which does not exceed in the aggregate the paid-up capital stock of the company outstanding at the close of such year. (Paragraph 2, lines 68–73.)

In computing the several amounts of interest to be deducted to the amount of paid-up capital it would seem to be proper to fix the same as of date December 31st of the preceding tax year.

An important question in this immediate connection was submitted to the Attorney-General of the United States with respect to what allowance should be made for interest paid by corporations on mortgages on their real estate. The opinion of the Attorney-General (February 21, 1910) is here reproduced as follows:

SIR: — I beg to acknowledge receipt of your communication of February 4, 1910, in which you ask my opinion whether, in ascertaining the net income of a corporation holding and dealing in real estate, the entire interest paid upon items of indebtedness secured by mortgages on such real estate, should be deducted from the gross income, without reference to the amount of capital stock of such company.

This request is predicated upon a communication or brief presented by "Allied real estate interests of the State of New York, and of allied real estate interests in the city of New York," signed by certain attorneys of the city of New York. I gather from the communication that "allied real estate interests" is not intended as the designation of any corporation or joint stock company, but is intended to suggest that the inquiries propounded in this communication are of common interest to corporations dealing in real estate in the city and State of New York, and therefore a comprehensive ruling is requested, which shall be applicable to all cases coming within the general inquiry put. As to this I might content myself with a reference to the position consistently adopted by my predecessors that opinions should not be rendered upon merely hypothetical or general questions, but only with respect to actual cases arising in the administration of the law by the respective departments. 9 Op. 82, 355, 421; 10 Op. 50; 13 Op. 531, 568; 19 Op. 331. However, in view of the character of the statute under consideration and the great importance to many interests affected thereby and to the fact that the inquiries raised by this communication may be dealt with under two general propositions, I deem it expedient to express an opinion with respect thereto.

The so-called Corporation Tax Law (Act of August 5, 1909, sec. 38) imposes a special excise tax upon the corporations, joint stock companies, and associations, and insurance companies therein described, to be measured by one per centum upon the net income, which net income by the second paragraph is to be ascertained by deducting from the gross amount of such income received within the year from all sources certain specified items, among which only the two following are necessary to be considered as bearing on the present inquiry, viz.:

"First. All the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property.

"Third. Interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company, or association, or insurance company outstanding at the close of the year, and in the case of a bank, banking association, or trust company all interest actually paid by it within the year on deposits."

It is manifest that with respect to interest on "its" bonded or other indebtedness, the right of deduction and the limitation of that right must be found in the third paragraph quoted above, and that, however burdensome such limitation may appear to be to the particular companies affected thereby, it is nevertheless very clearly expressed by the Act of Congress. It surely cannot be assumed that Congress, having specifically set a limitation to the amount of interest upon the indebtedness of a corporation which may be deductible from its gross income in reaching the measure of the tax under this law, left the way open in the first clause to eliminate the limitation imposed by the third, so that if in any of the cases suggested by the allied real estate interests, the indebtedness secured by mortgage upon the properties acquired by the respective corporations shall have been assumed by them and has thereby become their indebtedness, interest on such indebtedness can be deducted only to an amount not exceeding the paid-up capital stock of the respective corporations. On the other hand, cases are suggested in the communication submitted, where a realty corporation takes title to real property subject to a mortgage, but does not assume the indebtedness secured thereby. Under such circumstances, as is stated in the brief, "such mortgage is in no sense its indebtedness; the 'thing' itself, *i. e.*, the real property, and not the corporation, is liable for the mortgage and interest thereon; but in order that the corporation may maintain or keep possession of or not be ousted therefrom, the interest must be paid."

This would not be payment by the corporation owning the property subject to such lien of its own indebtedness, because the indebtedness is not "its" bonded or other indebtedness, but an indebtedness by a third party and charged as a lien upon the land acquired, subject thereto, by the purchasing corporation. The interest accruing upon such charge or incumbrance would certainly fall within the description in the first clause of the second paragraph of the section under consideration as one of the "charges required to be made as a condition to the continued use or possession of property" and therefore would be deductible as such.

Sec. 93. Deduction In Case of Banking Institutions to the Amount of Interest Actually Paid By Them Within the Year On Deposits. — All banking or trust institutions may deduct all interest actually paid by them within the year on deposits. It has been held by the treasury department that interest paid on

time deposits and deposits subject to check, constitute proper deduction from the amount of gross income during the year. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 94. Deduction for Taxes. — Deductions may be made for all sums paid by companies within the year for taxes imposed under the authority of the United States or any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein. Interest or taxes accruing prior to the year for which return is made is not a proper deduction from the gross income for that year. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Import duties or taxes if included in arriving at cost of goods are not deductible under the head of taxes paid during the year. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 95. Meaning of the Word "Taxes" as Employed In the Act. — The word "taxes," as used in the act, should unquestionably be given a very broad and liberal meaning. That is, it should include all taxes on real and personal property, customs, excises, licenses, special assessments, etc. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 96. What Species of Foreign Taxes May Be Deducted. — The Federal Corporation Tax Act specifically authorized deduction on account of taxes imposed by the government of any foreign country as a condition imposed by such government upon American companies carrying on business within its territories. (Act, paragraph 2, lines 88–90.) The taxes here referred to are the ordinary license or occupation taxes imposed by foreign governments upon companies doing business within their jurisdiction.

Sec. 97. Deductions to the Amount of Dividends Received Upon Stock of All Companies, Subject to the Payment of the Corporation Excise Tax. — The amounts received by companies subject to the operation of the Federal Corporation Tax Law

within the tax year, as dividends upon the stock of other corporations, joint stock companies or associations, or insurance companies, are proper subjects of deduction. (Act, paragraph 2, lines 60–63.) If the foregoing provision had not been inserted in the Corporation Tax Law there would have been one inevitable result, and that would have been a plain case of double taxation.

Sec. 98. Are Deductions Permissible for Dividends on Shares In a Company Whose Net Income Is Less Than $5,000? — The answer to this question is undoubtedly in the affirmative. In order that dividends of this character may be a proper subject for deduction, all that it is necessary for the company making the return to show, is that the same must have been received from companies belonging to a class subject to the tax imposed by the Federal Corporation Tax Law.

Sec. 99. Are Deductions Permissible on Account of Dividends on Shares in Foreign Companies? — Under the ruling of the treasury department (March 29, 1910, No. 1606, see Appendix K.) dividends received on stock of foreign corporations which are not subject to the operation of the Federal Corporation Tax Law do not constitute a proper deduction.

Sec. 100. Foreign Companies — Statutory Method of Calculating Tax on Income Thereof. — The Federal Corporation Tax Law (section 1, lines 10–26) provides that foreign companies shall be subject to the tax prescribed by the act only with respect to the carrying on or doing business by such company to an equivalent income of one per cent. upon the amount of net income over and above $5,000 received by it from business transacted and capital invested within the United States and its Territories, Alaska and the District of Columbia during the tax year. The act further provides (section 2, lines 35–63) that such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and

capital invested within the United States and any of its Territories, Alaska and the District of Columbia:

First. All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property if, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required to be made within the year to reserve funds; (third) interest actually paid within the year or its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies, or associations, and insurance companies subject to the tax hereby imposed.

Sec. 101. How Shall the Business of Foreign Companies Transacted Within the United States Be Distinguished from That Transacted in Foreign Countries? — The answer to this question is destined to prove one of the knottiest problems found anywhere in the Federal Corporation Tax Law. Much light, however, may be found in this connection by reference to the decisions of the courts in States where licenses or franchise taxes are imposed upon foreign corporations solely upon the capital invested in the foreign jurisdiction where such tax is imposed. The Federal Corporation Tax Law provides that the tax shall be levied, in the case of foreign companies, upon the business transacted, and the capital invested within the United States. (Act, section 1, lines 10–26.)

Sec. 102. Meaning of Business Transacted Within the United States. — The phrase "business transacted within the

United States," has unquestionably the same meaning as similar phraseology when found in the various incorporation acts governing the taxation of foreign corporations which transact business within the said State. (See, for example, People *ex rel.* Wall & Hanover Street Railway Co. *v.* Miller, 181 N. Y. 329.)

Sec. 103. Meaning of Capital Invested Within the United States. — A corporation may transact business within the United States and yet have no portion of its capital invested therein. The property of foreign corporation to be subject to taxation within the class now under discussion should represent capital invested in real or personal property and permanently located in the United States. (See Wall & Hanover St. Realty Co. *v.* Miller, 181 N. Y. 329.)

Sec. 104. Statutory Enumeration of Deductions from Gross Income by Foreign Companies. — The Federal Corporation Tax Law specifically enumerates the following deductions, which shall be made from the gross income of a foreign company, in order to determine the amount of net income upon which to base the proportionment of the excise tax to be levied upon any particular foreign company. These deductions are as follows:

First. All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts, and the net addition, if any, required by law to be made within the year to reserve funds; third, interest actually paid within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year for which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without

the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies, or associations and insurance companies subject to the tax hereby imposed. (Act, section 2, lines 35–63.)

Sec. 105. What Are Ordinary and Necessary Expenses as Defined by the Act? — The same remarks that have already been made with reference to determining what are the ordinary and necessary expenses of domestic corporations in this immediate connection are equally applicable in determining this same question with respect to foreign companies. (See *ante,* sections 77, 78.)

Sec. 106. What Losses Are Proper Subjects of Deduction? — The same observations which were made in this connection with reference to deductions for losses on the part of domestic companies are equally applicable here. (See *ante,* sections 81 to 84.)

Sec. 107. What Interest May Lawfully Be Deducted from Gross Income? — The same observations which were made in this connection with reference to deductions for interest on the part of domestic companies are equally applicable here. (See *ante,* sections 90, 91.)

General expenses, such as coal ship stores, etc., of foreign steamship companies to be prorated as provided in act for interest deductions. (T. R. March 29, 1910, No. 1606, see Appendix K.)

Sec. 108. What Taxes May Properly Be Charged Against Gross Income. — The same observations which were made in this connection with reference to deductions for taxes on the part of domestic companies are equally applicable here. (See *ante,* sections 94, 95.)

Sec. 109. What Dividends May Be Deducted from Gross Income. — The same observations which were made in this connection with reference to deductions for dividends on the part of

domestic companies are equally applicable here. (See *ante*, sections 97 to 99.)

Sec. 110. Special Provision for Assessment Insurance Companies. — The act makes special provision as follows in the case of assessment insurance companies, to wit: It permits of deduction in such cases to the amount of capital deposited by such companies of sums deposited with State or territorial officers pursuant to law as additions to guaranty or reserve funds and that the same shall be treated as being payments required by law to reserve funds. (Act, section 2, lines 63–67.)

CHAPTER VII.

CORRECTION AND REVISION OF RETURN.

Sec. 111. Transmission of the Return. — The Federal Corporation Tax Act provides that all companies of the character described in section 1 of the act must, on or before the first day of March of each year, make a true and correct return, under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer. This return must be transmitted by the company in whose behalf the return is made to the collector of internal revenue for the revenue district in which the company has its principal place of business. (Act, section 3, lines 93–95.)

In the case of foreign companies, the return must be transmitted to the collector of the internal revenue district in which is situated the place where its principal business is carried on within the United States. (Act, section 3, lines 93–95.) The words "principal place of business," as used in this connection, will undoubtedly be given a very broad and liberal interpretation and always in favor of the company making the return. Just so long as the return is transmitted in good faith, it matters little whether there is compliance according to the letter of the law in this regard. For the purpose of transmission, the principal place of business of a domestic company may be regarded either as the place designated in its charter as the domiciliary office of the company or it may be looked at, from a business standpoint, as being the place where its plant or principal business operations are carried on. In the case of foreign corporations reference is undoubtedly had to the place in the United States from or in which its principal business operations therein are directed or carried on.

Sec. 112. Penalty for Failure to Make Returns. — All returns must be made by June 1st unless the collector, in case of

neglect occasioned by the sickness or absence of the officer authorized to make the return, or for other sufficient reason, allows such further time for making the return as he may deem necessary not exceeding thirty days. (Act, paragraph 5, lines 8 to 16.)

In case of a refusal on the part of any company to make returns as required by the act, the commissioner of internal revenue is required to add fifty per cent. to the amount of the tax as assessed by him. (Act, section 5, lines 1–18. See also section 126 *post.*)

Sec. 113. Power of Collectors of Internal Revenue to Reject Incomplete Returns. — Inasmuch as the duty of the collector is to report to the commissioner of internal revenue of failure on the part of any company to make the returns as required by law (Act, section 4, lines 1–34), it may be safely asserted that by necessary implication it is his duty to report to the commissioner of internal revenue the fact that a certain company has made incomplete returns. In such a case the collector of internal revenue should simply transmit the return as made to the commissioner of internal revenue with such comments thereon as he thinks the case requires. The law imposes upon him no power to reject returns or to refuse to accept them from companies, no matter how incomplete. The act specifically says that such returns shall, as received, be transmitted forthwith by the collector to the commissioner of internal revenue. (Act, section 3, lines 93–95.)

Sec. 114. Power of Commissioner of Internal Revenue to Require Corrected Returns. — All returns, whether complete or incomplete or false, are required to be retained by the commissioner of internal revenue, whose duty it is to make assessments thereon. (Act, section 5, lines 18–38.) The act further provides as follows: (Act, section 4, lines 1–34.)

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which, in the opinion of the Commissioner, justifies the belief that the return made by any corporation, joint stock company, or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock com-

pany, or association, or insurance company, has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company, or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company, or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company, or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers.

Sec. 115. Evidence Required Upon Which to Base an Order for Corrected Returns. — Under either one of two existing state of facts the commissioner of internal revenue is authorized to compel returns by any company coming within the purview of the act. First; whenever evidence shall be brought before the commissioner of internal revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company, is incorrect. Second. Whenever any collector shall report to the commissioner of internal revenue that any corporation, joint stock company or association or insurance company has failed to make the return as required by law.

Under either of the foregoing state of facts the commissioner of internal revenue may require from the corporation, joint stock company or association, or insurance company making the said return the additional information set forth in the succeeding section. (Act, section 4, lines 1–34.)

Sec. 116. Power of Commissioner of Internal Revenue to Require Additional Information to Be Furnished. — Under the circumstances referred to in the preceding section, the commissioner of internal revenue is given authority to require from companies making the return such further information as he may

deem expedient with reference to their capital, income, losses, and expenditures. Upon the information so acquired the commissioner of internal revenue may amend any return or make the return where none has been made. (Act, section 4, lines 13–31.)

Sec. 117. Power of Commissioner of Internal Revenue to Examine the Company Books. — The commissioner of internal revenue, for the purpose of ascertaining the correctness of any return made to him, or for the purpose of making a return where none has been made is specifically authorized by any regularly appointed agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of any corporation, joint stock company or association, or insurance company. (Act, section 4, lines 25–29.)

Sec. 118. Power of Commissioner of Internal Revenue to Take Testimony. — The commissioner of internal revenue is authorized through the medium of any regularly appointed revenue agent, especially appointed by him for that purpose, to take testimony of any officer of any corporation, joint stock company, association or insurance company subject to the federal corporation tax, with reference to any matter required by law to be included in the return of any company making the same, or required to make the same. (Act, section 4, lines 25–29.)

Sec. 119. Powers of Commissioner in Taking Testimony. — The commissioner appointed to take testimony relating to matters required to be set out in the return of any company subject to the operation of the Federal Corporation Tax Act is given power to require the attendance of any officer or employee of any corporation, joint stock company or association, or insurance company, subject to the operation of the act, to take the testimony of such persons with reference to the matters required by law to be included in such return, with power to administer oaths to such person or persons.

Sec. 120. Attendance of Witnesses Before the Commissioner — How Secured. — The commissioner of internal revenue is given power to invoke the aid of any court of the United States having jurisdiction, to require the attendance of such officers or employees and the production of such books and papers as the commissioner appointed by him to take testimony, may deem desirable in connection with the making of any return of any corporation subject to the payment of the federal corporation tax. The foregoing provision was necessary in order to meet the difficulty which would undoubtedly be met in many cases by such commissioners procuring the attendance of officers or employees as witness, or in securing access to the books and papers of some company in the absence of any power granted to him to punish for contempt.

The act specifically confers power upon the Circuit and District Courts of the United States for the district in which any person summoned to appear before such commissioner to testify, or to produce books shall reside, to compel such attendance and production of books and testify by proper process. (Act, section 8, lines 19–24.)

Sec. 121. Examination of Company's Books — How Secured. — The books of any company, subject to the operation of the Federal Corporation Tax Act, containing entries bearing upon the matters required to be included in the return may be required to be brought before the special commissioner appointed by the commissioner of internal revenue. (Act, section 4, lines 13–29.) Such commissioner, provided he is a regularly appointed revenue agent, and is especially designated by the commissioner of internal revenue for that purpose, has authority to examine any books and papers therein upon the matters required to be included in any return. (Act, section 4, lines 13–25.) Such commissioner would undoubtedly make an order requiring the company in whose behalf the return was to be made to produce before him such books and papers as the commissioner might designate in the order. In case these books were not produced, an application could be made by the special commission to the proper Circuit or District Court of the United States (Act, section 8, lines 19–24) asking for an order requiring the production of the books wanted.

The returns, however, are subject to inspection only upon compliance with rules and regulations prescribed by the Secretary of the Treasury and approved by the President. (See T. D. 1665, November 28, 1910, Appendix X.) The regulation governing the returns of corporations are set forth in Treasury Department No. 1665, bearing date November 28, 1910, and read as follows:

(Regulations Governing the Inspection of Returns of Corporations Made in Accordance with Section 38 of the Tariff Act of August 5, 1909.)

TREASURY DEPARTMENT,
WASHINGTON, D. C., *November* 25, 1910.

INSPECTION OF RETURNS.

By section 38 of the Tariff Act of August 5, 1909, Congress imposed a special excise tax upon all corporations, joint stock companies, and associations, and insurance companies, foreign and domestic, with certain exceptions, engaged in business in the United States, with respect to carrying on or doing such business, and prescribed the method of handling the return of each corporation as follows:

"6. When the assessment shall be made, as provided in this section, the returns, together with any correction thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such."

In the act making appropriations for the legislative, executive, and judicial departments of the government for the fiscal year ending June 30, 1911, there appears this language:

"For classifying, indexing, exhibiting, and properly caring for the returns of all corporations, required by section thirty-eight of an act entitled "An Act to provide revenue, equalize duties, encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, including the employment, in the District of Columbia, of such clerical and other personal services and for rent of such quarters as may be necessary, twenty-five thousand dollars; Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President."

For the purpose of making effective the legislative intent thus expressed, the President has ordered that all such returns shall be open to inspection under the following rules and regulations:

1. The return of every corporation shall be open to the inspection of the proper officers and employees of the Treasury Department. Where access to any return is desired by an officer or employee of any other department of the government, an application for permission to inspect such return, setting out the reasons therefor, shall be made in writing, signed by the head of the executive department or other government establishment in which such officer or employee is employed, and transmitted to the Secretary of the Treasury. If, however, the return is desired to be used in any legal proceedings, or to be used in any manner by which any information contained in the return could

be made public, or access to any return is desired by any official of any State or Territory of the United States, the application for permission to inspect such return shall be referred to the attorney-general, and if recommended by him, transmitted to the Secretary of the Treasury.

2. The Secretary of the Treasury, at his discretion, upon application to him made, setting forth what constitutes a proper showing of cause, may permit inspection of the return of any corporation by any *bona fide* stockholder in such corporation. The person desiring to inspect such return shall make application, in writing, to the Secretary of the Treasury, setting forth the reasons why he should be permitted to make such inspection, and shall attach to his application a certificate signed by the president, or other principal officer of such corporation, countersigned by the secretary, under the corporate seal of the company, that he is a *bona fide* stockholder in said company. (Where this certificate cannot be secured, other evidence will be considered by the Secretary of the Treasury to determine the fact whether or not the applicant is a *bona fide* stockholder and therefore entitled to inspect the return made by such company.) The privilege of inspecting the return of any corporation is personal to the stockholders, and the permission granted by the Secretary to a stockholder to make such inspection cannot be delegated to any other person.

3. The returns of the following corporations shall be open to the inspection of any person upon written application to the Secretary of the Treasury, which application shall set forth briefly and succinctly all facts necessary to enable the Secretary to act upon the request:

(*a*) The returns of all companies whose stock is listed upon any duly organized and recognized stock exchange within the United States, for the purpose of having its shares dealt in by the public generally.

(*b*) All corporations whose stock is advertised in the press or offered to the public by the corporation itself for sale. In case of doubts as to whether any company falls within the classification above, the person desiring to see such return should make application, supported by advertisements, prospectus, or such other evidence as he may deem proper to establish the fact that the stock of such corporation is offered for general public sale.

Returns can be seen only in the office of the Commissioner of Internal Revenue, in Washington, D. C. In no case shall any collector, or any other internal revenue officer outside of the Treasury Department in Washington permit to be seen any return or furnish any information whatsoever relative to any return or any information secured by him in his official capacity relating to such return.

No provision is made in the law for furnishing a copy of any return to any person, and no copy of any return will be furnished except to the corporation making the return, or its duly constituted attorney.

The provisions herein contained shall be effective on and after the 25th day of November, 1910.

FRANKLIN MACVEAGH,
Secretary of the Treasury.

Approved:

WM. H. TAFT,
The White House, November 25, 1910.

Sec. 128. Statutory Protection Against Disclosures of Contents of Returns. — Section 7 (lines 1–12) provides as follows, with reference to disclosures of contents of returns, to wit:

It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section, except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

In this connection attention is called to Treasury Department Regulation dated February 17, 1910 (No. 594, see Appendix H.), which has exclusive reference to this so-called publicity clause of the Federal Corporation Tax Act. The foregoing regulation reads as follows:

Many communications have been received at this office making inquiry as to how the returns of corporations, joint stock companies, associations, and insurance companies, made as required under the provisions of the Corporation Excise Tax Law (section 38 of the Tariff Act of August 5, 1909) were to be handled in the office of the Commissioner of Internal Revenue, and whether or not they were to be open to general inspection.

The law, paragraph 6, on this subject, is as follows:

"6. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue, and shall constitute the public records and be open to inspection as such."

Congress appropriated $10,000 to carry into effect the provisions of the law. Under general statutes no portion of this appropriation is available for use in the District of Columbia. The returns cannot be open to general inspection in the District of Columbia without the expenditure of a substantial sum of money. If, therefore, it was the intent of Congress to make these returns open to general inspection, it will be necessary for it to appropriate a sum sufficient to cover the necessary expenses. Until this is done this bureau rules that the returns made under this law are to be handled just as returns made under other internal revenue statutes.

Any person, therefore, other than the taxpayer making the return, or his duly appointed agent or attorney, who desires to see such return shall make written application to the Secretary of the Treasury, who, in his discretion, will, upon a proper showing of cause approve such request. A request thus approved should then be presented to the Commissioner of Internal Revenue, who will thereupon permit the return in question to be seen by the applicant on such conditions as the Secretary of the Treasury shall have imposed. (See, however, section 127, *ante*.)

CHAPTER VIII.

ASSESSMENT OF THE FEDERAL CORPORATION TAX.

Sec. 129. Assessment and General Remarks Thereon. — Upon the receipt of the returns rendered, the tax, as ascertained to be due, must be assessed at the rate of one per centum upon the net income of the company making the return, over and above $5,000 received by it. As soon as the return is made by any company a record thereof is made by the collector to whom the return is transmitted, stating the name of the company making the return, the nature of the principal business transacted, the location of the principal place of business with the net income reported and the date on which such return was received. For this purpose a form is furnished by the commissioner of internal revenue (Form 632, see Treasury Department Regulation, December 3, 1909, see Appendix C.).

Under the regulations of the treasury department collectors are instructed whenever it appears to them advisable to do so, to request that a revenue agent be especially designated to collect and furnish to the commissioner of internal revenue such additional data as in his judgment is necessary to determine the actual amount of tax to be assessed against any company which, under the law, is required to make a return. (Internal Revenue Regulation, December 3, 1909, see Appendix C.)

Collectors of internal revenue are further instructed to make a careful canvass of their districts to ascertain whether all returns due have been received from companies subject to the tax imposed by the Federal Corporation Tax Law (December 3, 1909, see Appendix C.).

Sec. 130. Powers of Commissioner In Making Assessment. — Leaving out of consideration the power of the commissioner of internal revenue to require the making of a correct return, his

duties with respect to making an assessment are purely ministerial and are not in any sense judicial. All that remains for him to do is to make the necessary mathematical calculation to determine the amount of the tax assessed on the basis of one per centum of the total net income less the $5,000 net income allowed to each company free from taxation.

Sec. 131. Statutory Definition of Amount of Assessment. — If a correct return is made on or before March 1st of each tax year then the assessment is made on the basis of one per cent. on the net income as ascertained from the returns, excluding the $5,000 income allowed to all companies free from taxation. (Act, section 1, lines 13–15.) However, in case any company has failed or neglected to make the return, or to have the same verified by the proper officers, thus necessitating the making up of a return by the commissioner of internal revenue, the latter then directs that fifty per centum is to be added to the amount of the tax. (Act, section 5, lines 1–6.) In case of a return made with false or fraudulent intent, the act provides that one hundred per centum is to be added to the amount of the assessment, making the same two per centum of all net income in excess of $5,000.

Sec. 132. Time Within Which Assessment Must Be Made.— The act provides that all assessments shall be made before June 1st (Act, section 5, lines 18–24), and in case of neglect occasioned by the sickness or absence of any officer of any company required to make the return, or for other sufficient reason, the collector may allow such further time (subsequent to March 1st of the tax year) for making and delivering such return to him, as he may deem necessary, not exceeding thirty days.

Returns may be made under the immediate direction of the commissioner of internal revenue, and assessments may be made by him thereon at any time within three years after such return is due. (Act, section 5, lines 24–38.)

Sec. 133. Notice of Assessment. — The act, by implication at least, seems to require that notice be given to the companies as-

sessed. (Act, section 5, lines 32–34.) Under the Treasury Regulations (December 3, 1909, see Appendix C.) collectors of internal revenue of each district are required to give notice of assessment and subsequent demand under the forms prescribed by the commissioner of internal revenue. (Forms 17, 21.)

Section 3184 of the United States Revised Statutes provides as follows, to wit:

> Where it is not otherwise provided, the collector shall, in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person, in writing, to pay any tax stated therein to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such tax and demanding payment thereof. If such person does not pay the tax within ten days after the service or sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes, and the penalty of five per centum additional upon the amount of taxes and interest at the rate of one per centum per month.

Sec. 134. When Assessment Becomes Due and Payable. — The assessment becomes due and payable at any time on or before June 30th of each tax year. (Act, section 5, lines 32–38.) The only exception defined in the act is in those cases of refusal or neglect to make the return, and also in cases of false or fraudulent returns. (Act, section 5, lines 24–38.)

To any sum or sums due and unpaid after the 30th day of June in each year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of taxes paid and interest at the rate of one per centum per month upon such tax from the time the same becomes due. (Act, section 5, lines 33–38.)

Sec. 135. Legal Effect of Making Payments of Assessments Under Protest. — Wherever any company upon whom a tax is sought to be imposed is desirous of disputing either the amount or the validity of the tax, it should pay the amount of the assessment under protest. This for the reason that by making the payment in this manner it lays the proper foundation for the bringing of an action of assumpsit against the collector receiving the tax, to recover the amount so paid, for money paid to the government

without protest cannot be recovered back again in the absence of statutory provision therefor. Elliott *v.* Swarthout, 10 Peters 137; Wright *v.* Blakslee, 171 U. S. 174.

Attention is called here to the language of the United States Supreme Court in Cheeseborough *v.* United States, 192 U. S. 253, 48 L. E. 432, where the court spoke as follows:

The rule is firmly established that taxes voluntarily paid cannot be recovered back, and payments with knowledge and without compulsion are voluntary. At the same time when taxes are paid under protest that they are being illegally exacted, or with notice that the payor contends that they are illegal, and intends to institute suit to compel their repayment, a recovery in such a suit may on occasion be had, although generally speaking even a protest or notice will not avail if the payment be made voluntarily, with full knowledge of all the circumstances, and without any coercion by the actual or threatened exercise of power possessed, or supposed to be possessed, by the party exacting or receiving the payment, over the person or property of the party making the payment, from which the latter has no means of immediate relief than such payment.

* * * In Union Pac. R. Co. *v.* Dodge County, Mr. Chief Justice Waite, speaking for the court, said: "There are, no doubt, cases to be found in which the language of the court, if separated from the facts of the particular case under consideration would seem to imply that a protest alone was sufficient to show that the payment was not voluntary; but on examination it will be found that the protest was used to give effect to the other attending circumstances. Thus in Elliott *v.* Swartout, 10 Pet. 137, 9 L. Ed. 373, and Bend *v.* Hoyt, 13 Pet. 266, 10 L. Ed. 155, which were customs cases, the payments were made to release goods held for duties on imports, and the protests became necessary in order to show that the legality of the demand was not admitted when the payment was made. The recovery rested upon the fact that the payment was made to release property from detention, and the protest saved the rights which grew out of that fact. In Philadelphia *v.* The Collector, 5 Wall. 730, 18 L. ed. 276, which were internal revenue tax cases, the actions were sustained "upon the ground that the special provisions in the internal revenue acts referred to warranted the conclusion as a necessary implication that Congress intended to give the taxpayer such remedy." It is so expressly stated in the last case, p. 14, L. Ed. 276. As the case of Erskine *v.* Van Arsdale, 15 Wall. 75, 21 L. Ed. 63, followed these, and was of the same general character, it is to be presumed that it was put upon the same ground. In such cases the protest plays the same part as it does in customs cases and gives notice that the payment is not to be considered as admitting the right to make the demand.

The stamps in question were purchased from the Collector of Internal Revenue for the Second District of New York, for the purpose of affixing them to a deed of conveyance to the building company, but the collector was not informed at the time of the purchase of the particular purpose, and no intimation was given him, written or oral, that petitioner claimed that the law requiring such stamps was unconstitutional, and that he was making the

purchase under duress. The petition did allege that the building company was unwilling to accept an unstamped conveyance, and that the stamps were thereupon affixed in order to complete the transaction and obtain the consideration, but if that constituted duress as between Cheesebrough and his building company it was a matter with which the collector had nothing to do. On the face of the petition the purchase was purely voluntary and made under mutual mistake of law if the law were unconstitutional. But it is said that protest or notice would have made this payment involuntary and that because something over nineteen months after the payment petitioner made "a written application" to the Commissioner of Internal Revenue for the amount he had paid for the stamps the ordinary rule did not apply, inasmuch as such an application was "the statutory equivalent of a common-law protest or notice of suit."

The reference is to section 3220 of the Revised Statutes, which provides that the Commissioner of Internal Revenue, on appeal to him, may remit, refund, and pay back all taxes erroneously or illegally assessed or collected, or that appears to have been unjustly assessed or excessive in amount, or in any manner wrongfully collected; and also "repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit;" while sections 3226, 3227, and 3228 provide that no suit shall be maintained for the recovery of internal taxes alleged to have been erroneously or illegally assessed or collected "until appeal shall have been duly made to the Commissioner of Internal Revenue" or unless brought within two years after the cause of action accrued; and that the claim for refunding shall be presented to the Commissioner within two years.

The words "until appeal shall have been duly made" appear to us to imply an adverse decision by the collector, at least a compelled payment, or official demand for payment, from which the appeal is taken.

In Stewart *v.* Barnes, 153 U. S. 456, 38 L. Ed. 781, 14 Sup. Ct. Rep. 849, this court treated the language as providing for "an appeal," and we think correctly.

This petition did not set up any ruling of the collector, either specific or resulting from a demand to which petitioner yielded under protest or with notice, and from which he appealed to the Commissioner, but averred that he "made a written application" to the Commissioner to refund the amount he had paid.

We do not say that this was not sufficient to justify action by the Commissioner, but the averment as it stands is not equivalent to stating a previous adverse decision appealed from. The inference is that the application was a mere afterthought, the payment was voluntary.

The Commissioner might, nevertheless, have allowed the claim, and doubtless would have done so, in the interest of justice, if there were no particular circumstances to discredit it, and the law had been held unconstitutional by this court. But he rejected it, and petitioner was remitted to his suit in no different plight, so far as his cause of action was concerned, than if he had not sought the Commissioner at all.

In U. S. *v.* Real Estate Sav. Bank, 104 U. S. 728, 26 L. Ed. 908, it was held that the allowance of a claim by the Commissioner was equivalent to an

account stated between private parties, and binding on the United States until impeached for fraud or mistake, and that if not paid on proper application through the accounting officers of the Treasury Department, an action might be maintained on it in the Court of Claims; while if the claim were rejected an action might be prosecuted against the collector. It was not, however, ruled that in the latter situation a recovery could be had if the original payment had been voluntary and without objection.

It is one thing for the government to correct mistakes, return overcharges, or refund amounts exacted without authority, when satisfied such action is due to justice, and quite another thing for the government to be compelled to repay amounts which, in its view, have been lawfully collected.

By section 3220 authority is given and opportunity afforded to do what justice and right are found to require, and the conditions which govern contested litigation may well be regarded as waived; but it does not follow that there is any statutory waiver of such conditions when the government is proceeded against *in invitum*.

As we have said, the purchase of these stamps was purely voluntary, and if, notwithstanding recovery could be had, it could only be on protest or notice, and there was none such here, written or verbal, formal or informal.

It is argued that the provisions of section 3220, for the repayment of judgments against the collector, rendered protest or notice unnecessary for his protection; but it was clearly demanded for the protection of the government in conducting the extensive business of dealing in stamps, which were sold and delivered in quantities, and without it there would not be the slightest vestige of involuntary payment in transactions like that under consideration. And we find no right of recovery, expressly or by necessary implication, conferred by statute, in such circumstances.

Sec. 136. Form of Protest. — No particular form of protest is necessary. The parties should state that the payment is made under duress, and the protestant should set forth the fact that he claims that the tax as assessed is illegal, and should specify the specific grounds upon which the claim of illegality is based. The protest should be signed in the name of the company making the payment by some executive officer making the same in its behalf, or by its attorney duly authorized to act in the premises. (T. R. March 29, 1910, No. 1606.) Cheeseborough *v.* United States, 192 U. S. 253, 48 L. E. 432; Wright *v.* Blakeslee, 101 U. S. 174, 25 L. E. 1048.

CHAPTER IX.

COLLECTION OF FEDERAL CORPORATION TAX.

Sec. 137. Collection of the Tax — General Remarks Thereon. — It is made the duty of the several collectors of internal revenue throughout the United States, under the immediate direction of the commissioner of internal revenue, and under the general direction of the Secretary of the Treasury, to see to the collection of the federal corporation tax. See United States Revised Statutes, §§ 3172, 3183.

Section 3183 of the United States Revised Statutes provides as follows:

> It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized to collect all the taxes imposed by law, however the same may be designated. And every collector shall give receipts for all sums collected by him.

The collection of the tax as assessed is subject to the same general statutory provisions as are other internal revenue taxes, this fact being based upon the provisions of section 8 of the Federal Corporation Tax Law (lines 15–18), to the effect that all laws relating to the collection, remission and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of the federal corporation tax, are extended and made applicable hereto.

The Attorney-General of the United States in his opinion, dated April 2, 1910 (see Appendix), speaks as follows, with reference to the assessment and collection of the federal corporation tax:

> On or before March 1 of each year returns are required to be made by the corporations, joint stock companies, and associations liable for the tax to the Collector of Internal Revenue of the district in which they have their principal places of business. These returns are forwarded by the collector to the Com-

missioner of Internal Revenue, who shall make the assessments thereon. By section 3183, Revised Statutes, the duty of collecting all taxes in their respective districts is imposed by law on the collectors or their deputies, and by section 3184 it is provided that the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, specifying the manner in which such notice shall be given. And in the fifth paragraph of section 38 of the Act of 1909 it is provided that assessments shall be made, and the several companies liable to the tax shall be notified of the amount for which they are liable on or before the 1st day of June of each successive year. Therefore it is the duty of the Commissioner of Internal Revenue to send to each collector a list of the companies liable for the tax in his district, showing the amounts for which they are liable, within such time that the collector may give the required notice to such companies on or before the 1st day of June, and upon such lists the collections are made. These are the only lists which by statute are required to be sent to the collectors; and under the provision of section 3186, Revised Statutes, as amended, which is above quoted, the lien is fixed upon the assets of the corporation when this list comes into the collector's hands."

Sec. 138. To What Extent Is the Tax a Lien? — Section 3186 of the United States Revised Statutes reads as follows, to wit:

If any person liable to pay any tax, neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid with the interest, penalties, and costs that may accrue in addition thereto upon the property and rights to property belonging to such person.

The question as to whether a tax assessed under the provisions of the Federal Corporation Tax Law becomes a lien upon the property of the company against which the same is assessed, was considered by the Attorney-General of the United States in his opinion of date April 2, 1910. After holding that the company, concerning which his opinion had been invoked, was liable for the excise tax created by section 38 of the Act of Congress of August 5, 1909, he was asked to render an opinion upon the following question: Whether a lien existed on the assets of the said corporation to secure the payment of said federal corporation tax, and incidentally, when the lien attaches to the property of a corporation or joint stock company liable for taxes under said act. The opinion rendered on this question is as follows, to wit:

It will be observed that there is no express provision in this act which creates a lien upon the property of the corporation, joint stock company, or association to secure the payment of the tax. However, by section 3186, Revised Statutes, as amended by Act of March 1, 1879 (20 Stat. 331), it is provided generally with reference to internal revenue taxes, that "if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights belonging to such person," and in the eighth paragraph of said section 38, Act of August 5, 1909, it is provided that "all laws relating to the collection, remission, and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section." The method of assessing the tax and collecting the same, as provided for in the act itself and in the general statutes, appears to be as follows: On or before March 1 of each year returns are required to be made by the corporation, joint stock companies, and associations liable for the tax to the Collector of Internal Revenue of the district in which they have their principal places of business. These returns are forwarded by the collector to the Commissioner of Internal Revenue, who shall make the assessments thereon. By section 3183, Revised Statutes, the duty of collecting all taxes in their respective districts is imposed by law on the collectors or their deputies, and by section 3184 it is provided that the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, specifying the manner in which such notice shall be given. And in the fifth paragraph of section 38 of the Act of 1909 it is provided that assessments shall be made and the several companies liable to the tax shall be notified of the amount for which they are liable on or before the 1st day of June of each successive year. Therefore, it is the duty of the Commissioner of Internal Revenue to send to each collector a list of the companies liable for the tax in his district, showing the amounts for which they are liable, within such time that the collector may give his required notice to such companies on or before the 1st day of June, and upon such lists the collections are made. These are the only lists which by statute are required to be sent to the collectors, and under the provision of section 3186, Revised Statutes, as amended, which is above quoted, the lien is fixed upon the assets of the corporation when this list comes into the collector's hands. Therefore if the corporation in question had distributed all of its assets and had become dissolved in the manner provided for by law prior to December 31, 1909, then when the list of assessments came into the hands of the collector there was neither corporation nor assets, and nothing upon which the lien could attach, and consequently no lien exists to secure the payment of the taxes.

Sec. 139. Enumeration of Statutory Methods for Collecting the Tax. — With respect to the methods that may be employed by the federal government in collecting the federal corporation tax

reference must be had to the revised statutes of the United States, providing generally for the collection of internal revenue taxes. This for the reason that the Federal Corporation Tax Act itself provides that "all laws relating to the collection, remission and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of the section, are hereby extended and made applicable to the tax hereby imposed."

Turning now to the revenue laws applicable generally to the collection of internal revenue taxes we find the following methods open to the government as means for the collection of the annually imposed federal corporation tax, to wit: First, by distraint through levy and sale of the personal property of the corporation against whom the tax is imposed; second, by attachment and sale of real property of the company against whom the tax is imposed; third, by action of debt against the company against whom the tax is imposed.

Sec. 140. Levy Upon and Sale of Personal Property. — The following sections of the revised statutes of the United States are applicable in case it becomes necessary to levy and sell personal property of the company in order to secure payment of a specific tax assessed against it under the Federal Corporation Tax Law:

Section 3187. If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said tax, with five per centum additional thereto and interest as aforesaid, by distraint and sale in the manner herein provided, of the goods, chattels, or other effects, including stocks, securities and evidences of debt of the person delinquent as aforesaid; Provided, that there be exempted from distraint and sale, if belonging to the head of a family, school books and wearing apparel necessary for said family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market value of such sheep shall not exceed fifty dollars; and necessary food for such cow, hogs and sheep for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools or implements of a trade or profession to an amount not greater than one hundred dollars shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

Section 3188. In such case of neglect or refusal the collector may levy or by warrant may authorize a deputy collector to levy upon all property and rights to property, except as are exempt by the preceding section, belonging to such person, or on which the said lien exists for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs and expenses of such levy.

Section 3189. All persons and officers of companies or corporations are required on demand of a collector or deputy collector about to distrain, or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint on the property or rights of property liable to distraint for the tax due as aforesaid.

Section 3190. When distraint is made as aforesaid the officer charged with the collection shall make, or cause to be made an account of the goods or effects distrained, and a copy of which, signed by the officer making such distraint shall be left with the owner or possessor of such goods or effects at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded and the time and place of sale, and the said officer shall forthwith cause an injunction to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Said notice shall specify the articles distrained and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property, and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles from the place of making such distraint. Said sale may be adjourned from time to time by said officer if he deems it advisable, but not for a time to exceed in all thirty days.

Section 3191. When property subject to tax, or upon which a tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first apportioned out of the proceeds thereof, to the payment of the tax, and after any assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law and the commissioner of internal revenue shall assess the tax thereon.

Section 3192. When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector under such regulations as may be prescribed by the commissioner of internal revenue. The collector shall render to the commissioner a definite amount of all charges incurred in such sales, and in case of sale shall pay into the treasury the surplus, if any there be, after defraying all lawful charges and fees.

Section 3193. In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner

or possessor if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States and a commission of five per centum thereon for his own use, with the fees, charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.

Section 3194. In all cases of sale as aforesaid, the certificate of such sale shall be *prima facie* evidence of the right of the officer to make such sale and conclusive evidence of the regularity of his proceedings in making the same, and shall transfer to the purchaser all right, title and interest of said delinquent in and to the property sold, and where such property consists of stocks said certificate shall be notice when received, to any corporation, company or association, of said transfer, and shall be authority to such corporation, company or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates which shall be void, whether cancelled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the prson holding the same as against any person holding or claiming to hold possession of such securities or other evidences of debt.

Section 3195. When any property liable to distraint for taxes is not divisible so as to enable the collector by a sale of part thereof to raise the whole amount of the tax with all costs, charges and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs and charges, shall be paid to the person legally entitled to receive the same; or if he cannot be found, or refuses to receive the same, shall be deposited in the treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application, and satisfactory proofs in support thereof, shall, by warrant to the treasurer, cause the same to be paid to the applicant.

Sec. 141. Attachment and Sale of Real Estate. — The following sections of the revised statutes are applicable in case it becomes necessary to levy and sell real property of the company in order to secure payment of a specific tax assessed against it under the Federal Corporation Tax Law:

Section 3196. When goods, chattels or effects sufficient to satisfy the tax imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

Section 3197. The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where such estate is situated, a notice in writing, stating what particular estate is to be sold, describing the same with

reasonable certainty, and the time when and place where such officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the postoffice nearest to the estate seized and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and the officer's fee of ten dollars. When the real estate so seized consists of several distinct parts or parcels, the officer making the sale thereof shall offer each tract or parcel for sale, separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them in estimating the minimum price aforesaid. If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States, and in case the same shall be declared to be purchased for the United States the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and at the proper time, as hereafter provided, shall execute a deed thereunder to its proportion, and the instrument of approval as to its form by the United States District Attorney for the district in which the property is situate, and shall without delay cause to be duly recorded in the proper register of deeds, and immediately thereafter shall transmit such deed to the Commissioner of Internal Revenue. And said sale may be adjourned from time to time by said officer for not exceeding thirty days, in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner. And it is hereby provided that all certificates of purchase and deeds of property purchased by the United States under the internal revenue laws on sales for taxes, or not issuing from the United States courts which now are or may hereafter be found in the office of any collector, United States marshal or United States District Attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue, and it is hereby further provided that for the preparation and approval by the United States District Attorney of each deed as above required, a fee of $5 shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns.

Section 3198. Under sale of real estate as provided in the preceding section, and the payment of the purchase money, the officer making the seizure and sale, shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate shall not be redeemed in the manner and within the time herein provided the said collector or deputy collector shall execute to the said purchaser upon his surrender of said certificate a deed to the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance

with the laws of the State in which said real estate is situate, upon the subject of sales of real estate under execution.

Section 3199. The deed of sale given in pursuance of the preceding section shall be *prima facie* evidence of the facts therein stated; and if the proceedings of the offer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title and interest of the party delinquent in and to the real estate thus held at the time the lien of the United States attached thereto.

Section 3200. Any collector or deputy collector may, for the collection of tax imposed upon any person committed to him for collection, seize and sell the lands of such person situated in any other collection district within the State in which such officer resides, and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district.

Section 3201. Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector, at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Section 3202. The owners of any real estate sold as aforesaid, or their heirs, executors, administrators or any person having any interest thereon or a lien thereof, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof upon payment to the purchaser, but in case he cannot be found within the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum.

Section 3203. It shall be the duty of every collector to keep a record of all sales of land made in his collection district, whether by himself or his deputies, or by any collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed, and all proceedings in making said sale, the amount of fees and expenses, the name of the purchaser and the date of the deed. And on or about the 5th day of each succeeding month he shall transmit a copy of such record of the preceding month to the Commissioner of Internal Revenue. And it shall be the duty of every deputy making the sale as aforesaid to return a statement of all his proceedings to the collector, and to certify the record thereof. In case of the death or removal of the collector, or expiration of his term of office, or from any other cause, said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Section 3204. When any lands sold as aforesaid are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of said redemption.

Section 3207. In any case where there has been a refusal or neglect to pay any tax and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in cham-

cery to be filed in a district or circuit court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by delinquent, or in which he has any right, title or interest to the payment of such tax. Any person having liens upon or claiming any interest in the real estate sought to be subject, as aforesaid, shall be made parties to such proceedings and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise authorized by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the real estate in question, and in all cases where a claim or interest of the United States is established, shall decree a sale of said real estate by the proper officer of the court, and the distribution of the proceeds of such sale, according to the findings of the court in respect to the interests of the parties and of the United States.

Section 3208. The Commissioner of Internal Revenue shall have charge of all real estate which is now or shall become the property of the United States by judgment or forfeiture under the internal revenue laws, or which has been or shall be assigned, set off or conveyed by purchase, deed or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be offset in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them; and, with the approval of the Secretary of the Treasury, may, at public vendue, upon not less than twenty days' notice, sell and dispose of all real estate owned or held by the United States aforesaid; and until such sale the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may lease said real estate owned as aforesaid, on such terms and for such period as they shall deem expedient. And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon at the rate of one per centum per month to the United States within two years from the date of the acquisiion of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

Section 3209. Whenever a collector has on any such list duly returned to him the name of any person not within his collection district, who is liable to such tax, or any person so liable who has in the collection district in which he resides no sufficient property subject to seizure or distraint from which the money due for taxes can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which such person shall have been removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection district;

and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

In addition to the foregoing sections attention should be called to section 3205 of the United States Revised Statutes, which reads as follows:

Section 3205. Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

Sec. 142. Action of Debt. — It is unquestionable that an action of debt will always lie in favor of the government to recover the amount of the assessment made by the commissioner of internal revenue against a company under the provisions of the Federal Corporation Tax Law. Dollar Savings Bank *v.* United States, 19 Wall. 227.

Under section 3214 of the United States Revised Statutes no suit for the recovery of taxes or of any fine, penalty or forfeiture can be commenced unless the commissioner of internal revenue authorizes and sanctions the proceeding.

In this connection attention is called to the opinion of the Attorney-General of date April 2, 1910 (see Appendix II), wherein, after holding that the government in the particular case upon which his opinion was asked as to a general levy upon the property of a corporation against whom the federal corporation tax was sought to be assessed, remarked as follows:

3. Notwithstanding the fact that the particular method of collecting this excise tax is prescribed in the statute, yet such remedy is not exclusive, and the government may resort to the common-law method of collecting the same. Such was the holding of the Supreme Court of the United States in Savings Bank *v.* The United States, 19 Wall. 227, 240, with reference to the collection of a tax under an act which levied a tax of 5 per centum on all dividends in scrip or money declared due to stockholders, policyholders or depositors as part of the earnings, income or gains of any bank, trust company, savings institution, and of any insurance company. The dissolution of a corporation does not extinguish its liabilities; and through courts of equity creditors may pursue its assets into the hands of any person who is not a *bona fide* pur-

chaser. Mumma *v.* Potomac Company, 8 Peters 281, 286; Curran *v.* Arkansas, 15 Howard 304, 307; Railroad Company *v.* Howard, 7 Wall. 392, 410; Scammon *v.* Kimball, 92 U. S. 362, 367.

In Railroad Company *v.* Howard the court said:

"Assets derived from the sale of the capital stock of the corporation, or of its property, becomes, as respects creditors, the substitutes for the things sold, and as such they are subject to the same liabilities and restrictions as the things sold were before the sale, and while they remained in the possession of the corporation. Even the sale of the entire capital stock of the company and the division of the proceeds of the sale among the stockholders will not defeat the trust nor impair the remedy of the creditors, if any debts remain unpaid, as the creditors in that event may pursue the consideration of the sale in the hands of the respective stockholders, and compel each one, to the extent of the fund, to contribute *pro rata* toward the payment of their debts out of the moneys so received and in their hands."

If the corporation in question engaged in business after the approval of the Act of August 5, 1909, then it was liable for the tax, though it may not have become due until after the corporation was dissolved; and the government may collect the tax by pursuing the assets of the corporation into the hands of the stockholders in the same manner as that by which any other creditor might obtain satisfaction of his debt. (See T. D. 1615, April 15, 1910, Appendix N.)

Sec. 143. Powers of the Secretary of the Treasury In the Collection of the Tax. — In addition to his general power to superintend the collection of revenue, the Secretary of the Treasury has under section 251 of the United States Revised Statutes the following powers, to wit:

The Secretary of the Treasury shall make and issue, from time to time, such instructions and regulations to the several collectors, receivers, depositaries, officers and others who may receive treasury notes, United States notes, and other securities of the United States, or who may be in any way connected or employed in the appropriation and issue of the same, as he shall deem best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from fraud and loss or shall prescribe the terms of interest, oaths, bonds and other papers, and rules and regulations not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the internal revenue laws, or in carrying out the provisions of law relating to raising revenue from members or to duties on members, or to warehousing, or shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law; he shall prescribe the forms of the annual statements to be submitted to Congress by him, showing the actual state of commerce and navigation between the United States and foreign countries or coastwise, and between the collection districts of the United States in each year. (See section 146, *post*.)

Sec. 144. Powers of Commissioner of Internal Revenue In the Collection of the Tax. — The powers of the commissioner of internal revenue with reference to the collection of the Federal Corporation Law are governed by section 321 of the United States Revised Statutes, which reads as follows:

The Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, shall have general superintendence of the assessment and collection of all duties and taxes now or hereafter imposed by law, providing internal revenue; and shall prepare and distribute all the instructions, regulations, directions, forms, instruments and other matters pertaining to the collection and assessment of internal revenue, and shall provide hydrometers and proper and sufficient adhesive stamps and stamps or dies for expressing and denoting stamp duties, or in the case of personal duties, the amount thereof, and alter or renew or replace such stamps from time to time as occasion may require. He may also contract for or procure the printing of such forms, decisions and regulations, but the printing of such forms, decisions and regulations shall be done at the Public Printing Office, unless the Public Printer shall be unable to perform the work; Provided, that the Commissioner of Internal Revenue may, under such regulations as may be established by the Secretary of the Treasury, after public notice, receive bids and make contracts for supplying stationery, blank books and blanks to the collectors in the several collection districts, the expense of assessing and the expense of the collection of internal revenue. (See section 146, *post*.)

Attention is called to the following sections, United States Revised Statutes, which read as follows:

Section 3152. The Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ competent agents not exceeding at any time thirty-five in number, to be paid such compensation as he may deem proper, not exceeding in aggregate any proportion made for that purpose, or he may, at his discretion, assign any such agent to duty under the direction of any officer of internal revenue, or to such other special duty as he may deem necessary; and no general or special agent or inspector, by whatever designation he may be known, of the treasury department, in connection with the internal revenue, except inspectors of tobacco, snuff and cigars, and except as provided for in this title, shall be appointed, commissioned, employed or continued in office.

Section 3163. Every collector within his collection district, and every internal revenue agent, shall see that all laws and regulations relating to the collection of internal taxes are faithfully complied with; and shall aid in the prevention, detection and punishment of any frauds in relation thereto. It shall be the duty of every collector and of every internal revenue agent to report to the Commissioner in writing any neglect of duty, incompetency, delinquency or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts in each case sustaining the same. The Commissioner may transfer any inspector, gauge or store-

keeper, or storekeeper and gauger, from one distillery or other place of duty, or from one collection district to another.

Sec. 145. Powers of Collectors of Internal Revenue In the Collection of the Corporation Tax. — To ascertain the powers of collectors of internal revenue in the collection of the federal corporation, tax reference must be had to those sections of the revised statutes of the United States applicable generally to the collection of internal revenue taxes. The sections to which reference is here had read as follows, to wit:

Section 3164. It shall be the duty of every collector of internal revenue to report within ten days to the District Attorney of the district in which any fine, penalty or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, and which may come to his knowledge from time to time, stating the provisions of the law believed to be violated, and if any collector shall in any case fail to report to the proper District Attorney, as prescribed in this section, his right to any compensation, benefit or allowance in such case shall be forfeited to the United States, and the same may in the discretion of the Secretary of the Treasury be awarded to such persons as may make complaint and prosecute the same to judgment or conviction.

Section 3165. Every collector, deputy collector and inspector is authorized to administer oaths, and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law, to be taken.

Section 3172. That every collector shall, from time to time, cause his deputies to proceed through every part of his district, and inquire after and concerning all persons therein who are liable to any internal revenue, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate such objects.

Section 3173. That it shall be the duty of any person, partnership, firm, association or corporation made liable to any duty, special tax, stamp or tax imposed by law, when not otherwise provided for, in case of a special tax on or before the 31st day of July in each year, and in case of income taxes, on or before the first Monday in March of each year, and in other cases before the day on which taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, for which such person, partnership, firm, association or corporation is liable; provided that if any person liable to pay any duty or tax or owning, pos-

sessing or having the care or management of property, goods, wares and merchandise, articles or objects liable to any duty, tax or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax aforesaid, then and in that case it shall be the duty of the collector or deputy collector to make such list or return, which being distinctly read, consented to and signed and verified by oath or affirmation by the person so owning, possessing or having the care and management as aforesaid, may be received as the list of such person; Provided, further, that in case no annual list or return has been rendered by such person to the collector or deputy collector, as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit it in the nearest postoffice, a note or memorandum, addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum; verified by oath or affirmation. And if any person, on being notified or required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax, fails to do so at the time required, or delivers any return which, in the opinion of the collector is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody or care of books of account, containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State, in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was Commissioner.

Section 3174. Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and a certificate of service signed by such deputy shall be evidence of the facts he states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

Section 3175. Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories, as required, the collectors may apply to the judge of the District Court, or to a commissioner of the Circuit Court of the United

States for the district within which the person so summoned resides, for an attachment against him, as for contempt. It shall be the duty of the judge or commissioner to hear the application, and if satisfactory proof is made to issue an attachment directed to some proper officer for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case, and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper, not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons, and to punish such persons for his default or disobedience.

Section 3176. When any person, corporation, company or association refuses or neglects to render any return or list, the collector or any deputy collector shall make, according to the best knowledge which he can obtain, including that derived from the evidence elicited by examination of the collector and on his own view and information, such list or return, according to the form prescribed, of the income, property and objects liable to taxation owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally, he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per cent. to such tax. In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall in all cases be collected at the same time and in the same manner as the tax, unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax, and the list or return so made and subscribed by such collector or deputy collector shall be held *prima facie* good and sufficient for all lawful purposes.

Section 3177. Any collector, deputy collector or inspector may enter in the day time any buildings or place where any articles or objects subject to tax are made, produced or kept within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while open in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector or inspector in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court.

Section 3178. All persons required to make returns or lists of objects

charged with an internal tax, shall declare therein whether the several rates and amounts are stated according to their value in legal tender currency, or according to their values in coin money, and in case of neglect or refusal so to declare to the satisfaction of the collector receiving such returns or list, such officer shall make returns or lists for such persons so neglecting or refusing, as in cases of persons neglecting or refusing to make the returns or lists required by law, and the Commissioner shall assess the tax thereon, and add thereto the amount imposed by law in cases of such neglect or refusal. And whenever the rates and amounts contained in the returns or lists are stated in coin money, the collector receiving the same shall reduce them to their equivalent in legal tender currency, according to the value of such coined money in such currency for the time covered by such returns.

Section 3179. Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account or statement with intent to defeat or evade the valuation, enumeration or assessment intended to be made, or being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one year or both at the discretion of the court, with costs of prosecution.

Section 3180. Whenever there are in any district any articles not owned or possessed by or under the care or control of any person within said district and liable to be taxed, and of which no list has been transmitted to the collector as required by law, the collector or one of his deputies shall enter the premises where such articles are situated, and shall take such view thereof as may be necessary and make lists of the same, according to the form prescribed. Said lists to be subscribed by such collector or deputy collector, and shall be taken as sufficient lists of such articles for all purposes.

Section 3182. The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations and assessments of all taxes and penalties imposed by this title, or accruing under any formal revenue act where such taxes have not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered to any collector is imperfect or incomplete, in consequence of the omission of the name of any person liable to tax, or in consequence of any omission or understatement or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return as aforesaid there has been or shall be any omission, undervaluation and understatement or false or fraudulent statement, together with the amount for which such person may be liable above the amount for which he may have been or shall be assessed upon any return made as aforesaid, and he shall certify and return such list to the collector as required by law, and all provisions of law for the ascertainment of liability of any tax,

or the assessment or collection thereof shall be held to apply so far as may be necessary to the proceedings herein authorized and directed.

Section 3183. It shall be the duty of the collectors or their deputies in their respective districts, and they are authorized to collect the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by them.

Section 3184. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person in writing to pay any tax stated therein to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such tax and demanding payment thereof. If such person does not pay the tax within ten days after the service or sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes, and the penalty of five per centum additional upon the amount of taxes and interest at the rate of one per centum a month.

Sec. 146. Rules and Regulations of the Secretary of the Treasury With Reference to the Collection, Remission and Refund of the Federal Corporation Tax Law. — Under section 321 of the United States Revised Statutes the commissioner of internal revenue is authorized to prepare, under the direction of the Secretary of the Treasury, regulations and directions pertaining to the collection of internal revenue. Under Treasury Department Regulations (T. D. 1534) of date August 21, 1909, the commissioner of internal revenue, under the direction of the Secretary of the Treasury, issued the following regulation relative to the collection of the federal corporation tax:

Attention is specially called to section 38 of the Act of August 5, 1909, imposing on certain corporations, joint stock companies, associations and insurance companies a special excise tax to be paid annually.

In view of the large number of corporations, companies and associations subject to this tax, collectors of internal revenue will, on receipt of this circular, at once proceed to thoroughly canvass their districts, and as soon as possible furnish this office with a list of all such corporations, companies and associations organized in their districts, setting forth the amount of capital stock and principal place of business of each. They will also furnish a separate list of all corporations, companies and associations organized elsewhere (including such as are organized under the laws of a foreign country) having their principal place of business in the district where such list is prepared. Duplicates of such lists will be made by each collector, one copy thereof to be retained in his office, and the other, when completed, forwarded to the Commissioner of Internal Revenue. Blanks to be used in such cases will be furnished collectors; and, for statistical purposes and convenient reference, all

such corporations, companies and associations will be classified and listed according to the nature of the business carried on, as follows:

Class A. Financial and commercial. — Including banks, banking associations, trust companies, guaranty and surety companies, title insurance companies, building associations (if for profit) and insurance companies, not specifically exempt.

Class B. Public service. — Such as railroads, steamboat, ferryboat and stage line companies, pipe line, gas and electric light companies, express, transportation and storage companies, telegraph and telephone companies.

Class C. Industrial and manufacturing. — Such as mining, lumber and coke companies, rolling mills, foundry and machine shops, sawmills, flour, woolen, cotton and other mills, manufacturers of cars, automobiles, elevators, agricultural implements and all articles manufactured wholly or in part from metal, wood or other material, manufacturers or refiners of sugar, molasses, sirups or other products, ice and refrigerating companies, slaughter house, tannery, packing or canning companies, etc.

Class D. Mercantile. — Including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce and all goods, wares and merchandise.

Class E. Miscellaneous. — Such as architects, contractors, hotel, theatre, or other companies or associations not otherwise classed.

When classified as above indicated, the names of the various corporations, companies and associations will be listed alphabetically and will be numbered consecutively (commencing with No. 1 in each class) and in forwarding returns or papers subsequently rendered or submitted by such corporations or companies collectors will see that the same have placed thereon the designating class letter and number corresponding with those noted on the lists herein required to be furnished.

Special instructions regarding the form of return to be rendered by such corporations, and as to the preparation or assessment lists by collectors, will be issued in due season.

The tax assessed under the provisions of the Federal Corporation Tax Law will be receipted for as in the case of other assessed taxes. Unless paid within the time fixed by the statute, notice and demand should be at once issued, and in case of nonpayment, distraint proceedings should be instituted without delay.

It should be noted that all regulations issued by the Secretary of the Treasury with reference to the internal revenue and for the government of the officers of the revenue department shall have the force and effect of law and are as binding as if incorporated in the statute law of the United States. (Stegall *v.* Thurman, 175 Fed. Rep. 813.)

CHAPTER X.

COURT PROCEDURE.

Sec. 147. General Remarks Thereon. — The same remedies are open to the companies against whom a tax is imposed under the provisions of the Federal Corporation Tax Law as are applicable generally to parties against whom other internal revenue taxes are assessed. This for the reason that the Federal Corporation Tax Law (section 8, lines 15–24) specifically provides that all laws of the United States relating to the collection, remission and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of the Federal Corporation Tax Act are extended and made applicable thereto.

Sec. 148. Remedy by Appeal to the Commissioner of Internal Revenue. — Section 3220 of the United States Revised Statutes provides as follows:

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund and pay back all taxes erroneously or illegally assessed or collected and all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court for any internal taxes collected by him, with the costs and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector or inspector in any suit brought against him by reason of anything done in the due performance of his official duty; Provided, that where a second assessment is made in case of a list, statement or return, which, in the opinion of the collector or deputy collector was false or fraudulent or contained any understatement or undervaluation, and such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded or paid back unless it is provld that said list, statement or return was not false or fraudulent, and did not contain any understatement or undervaluation.

It should be further noted that all applications for refund of taxes erroneously charged or illegally collected against a corporation, must be made to the commissioner of internal revenue within two years from the date of such collection. (U. S. R. S., § 2228; see generally Cheeseborough *v.* U. S., 192 U. S. 253, 24 Sup. Ct. Rep. 262.)

Sec. 149. What Courts Have Power to Hear Appeals From the Levying of the Tax. — The basis upon which the federal corporation tax seems to have been laid is along the line of confining the right of appeal to the executive department having charge of the assessment and collection of the tax. (Taylor *v.* Secor, 92 U. S. 575, 23 L. E. 663; Cheatham *v.* Norwell, 92 U. S. 85.) So it may be said that no specific right to appeal to the courts for redress either from an erroneous assessment or for an illegal assessment is provided by the federal corporation tax.

Sec. 150. Remedy by Injunction. — Section 3224 of the United States Revised Statutes provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. See Snyder *v.* Marks, 109 U. S. 189, 3 Sup. Ct. Rep. 157.

Neither a federal or state court has any power to stay the assessment or collection of any tax. (Boeckler Lumber Co. *v.* Hayward, 20 Fed. 422.) The executive branch of the federal government cannot be interfered with in this manner. (Moore *v.* Miller, 5 App. Cases D. C. 413.)

Sec. 151. Remedy by Mandamus. — If relief by mandamus is to be sought it must be granted by a federal court, as no State court has power to issue such writ to any officer in the employ of the federal government. (McClung *v.* Silliman, 6 Wheat. 598.) Even United States courts have no general power to issue the writ of mandamus. The power, where it exists, is generally treated as one growing out of their appellate jurisdiction. See Davenport *v.* County of Dodge, 105 U. S. 237; Marberry *v.* Madison, 1 Cranch, 137. Ordinarily resort must be had to the courts estab-

lished by Congress in the District of Columbia, wherein the office of the commissioner of internal revenue is located, and wherein the commissioner must reside. (U. S. *v.* Black, 128 U. S. 40, 9 Sup. Ct. Rep. 12; Decatur *v.* Paulding, 14 Peters 497.)

Sec. 152. Remedy by Action Against the Officer for Levies Made by Him In Connection With the Enforcement of the Tax. — If a levy is made against a company for the collection of a tax illegally assessed, or if the collection is made in an illegal manner, the officer making such levy is liable in damages in some property action, such as conversion or trespass. These actions may be maintained without reference to the fact that the plaintiff has appealed to the commissioner of internal revenue for redress. Erskine *v.* Hohnbach, 14 Wall. 613; Stutsman Co. *v.* Wallace, 142 U. S. 293.

NOTE. — A cause of action accrues against a collector at the time the Commissioner renders his decision and stands upon the primary enactment of this statute, requiring that suit should be brought within two years next after the cause of action accrued. The provision of the proviso that action may be brought on any claim pending before the Commissioner within one year after his decision, does not apply to any claim presented to the Commissioner since the enactment of the statute. Wright *v.* Blakslee, 101 U. S. 174. See, also, Cheathran *v.* U. S., 92 U. S 85. In which case the court stated that the period of limitation begins at the time of the decision of the Commissioner, and not at the time thereafter that payment of the tax may be made. See 16 Op. Atty.-Gen. 249.

The collector cannot be sued unless the taxpayer has applied for relief to the Commissioner, within the time and in the manner pointed out by law, and relief has been denied him. Kings Co. Savings Institution *v.* Blair, 116 U. S. 200.

After the recovery of a judgment against a collector of internal revenue for damages and costs for the wrongful seizure of property, if the collector appeals to the Commissioner for the payment of the judgment, it is not improper to consider the application as one for the payment to the plaintiff on the judgment. As the first clause provides for the refunding of taxes, and penalties to the person from whom the taxes operates to the person from whom they are collected, it is not common with such provision that the moneys and damages to be repaid under the second and third clauses should be paid to the person who recovers the judgment for them if the judgment is not paid by the defendant. U. S. *v.* Frerichs, 124 U. S. 315. See, also, Nixon *v.* U. S., 18 Ct. Cl. 456.

Sec. 153. Action to Recover Taxes Paid Under Protest. — The easiest and most effective way to test the legality of any tax assessed under the Federal Corporation Tax Law is for the company against whom the tax is assessed to pay the full amount of the tax under protest, and then bring an action for money paid out and received against the collector to recover back the amount so paid. (Elliott *v.* Swartout, 10 Pet. 137; Wright *v.* Blakeslee, 110 U. S. 174.) However, in this connection in order to make such a line of procedure effective, the payment of the tax must have been made under threat of proceedings by the commissioner to enforce the payment of the tax. (Cheeseborough *v.* U. S., 192 U. S. 253.) And provided further, that before the commencement of the action the appeal must have been taken to the commissioner of internal revenue petitioning him to repay the amount of the tax so paid under protest. (See U. S. Revised Statutes, § 3226; Hubbard *v.* Collector, 12 Wall. 1; Clinkenbeard *v.* U. S., 21 Wall. 65.) The remedy is, however, not complete and satisfactory except in those cases where the payment is wholly void. (See Cheeseborough *v.* United States, 192 U. S. 253, 262, 263.)

Where an excessive tax is paid under a mistake of law and without protest, the payment is voluntary, and there can be no recovery. (Gulbenskian *v.* U. S., 75 Fed. 860 (C. C. S. D. N. Y., Dec. 28, 1909); Robertson *v.* Bradbury, 132 U. S. 491; Elliott *v.* Swarthout, 10 Pet. 137; Railroad Co. *v.* Commissioner, 98 U. S. 341; Rodick *v.* Hutchins, 95 U. S. 210; Little *v.* Bowers, 134 U. S. 547.)

APPENDIXES

APPENDIX A.

Text of the Corporation Tax Enactment, Constituting Section 38 of the Act of Congress, approved April 5th, 1909, found in the United States Statutes, 61st Congress, 1909, First Session, pages 11, 112–118.

CHAPTER VI.

An Act to Provide Revenue, Equalize Duties and encourage the industries of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

(Here follow the first 37 sections of the foregoing Act.)

Section 38. (For convenience herein the first subdivision of section 38 is numbered as section 1. The other sections running from 2 to 8 inclusive, are found so numbered in the Act itself.)

Section 1. That every corporation, joint stock company, or association, organized for profit, and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States, or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States, or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars, received by it from all sources during such year, exclusive of amounts received by it as

dividends upon stock of other corporations, joint stock companies, or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations or insurance companies, subject to the tax hereby imposed: Provided, however That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations, and dependants of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest

actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed. Provided, That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its territories, Alaska, and the District of Columbia including all charges, such as rentals, or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid up capital stock outstanding at the

close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States, or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies, or associations and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies, or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten; and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the

Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation joint stock company or association, or insurance comany at the close of the year; (third) the gross amount of the income of such corporation joint stock company or association or insurance company, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association or insurance company, within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company, within the year, stating separately all charges, such as rentals or franchise payments required to be made as a condition to and continued use or possession of property, and if organized under the laws of a foreign country, the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during

the year in business conducted by it within the United States or its Territories, Alaska and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law, to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the Government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the Collector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the Commissioner justifies the belief that the return made by any

corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return such further information with reference to its capital, income, losses and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of

neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed, unless the refusal, neglect or falsity is discovered, after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations or insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken or report made under this section, except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars. or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign or verify any return who makes any false or fraudulent return, or statement required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books and testimony by appropriate process.

APPENDIX B.

(T. D. 1534.)

TREASURY DEPARTMENT REGULATION.

SPECIAL EXCISE TAX.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 21, 1909.

To collectors of internal revenue:

Attention is especially called to section 38 of the act of August 5, 1909, imposing on certain corporations, joint stock companies, associations, and insurance companies a special excise tax to be paid annually.

In view of the large number of corporations, companies, and associations subject to this tax, collectors of internal revenue will, on receipt of this circular, at once proceed to thoroughly canvass their districts, and as soon as possible furnish this office with a list of all such corporations, companies, and associations organized in their districts, setting forth the amount of capital stock and principal place of business of each. They will also furnish a separate list of all corporations, companies, and associations organized elsewhere (including such as are organized under the laws of a foreign country) having their principal place of business in the district where such list is prepared. Duplicates of such lists will be made by each collector, one copy thereof to be retained in his office, and the other, when completed, forwarded to the Commissioner of Internal Revenue. Blanks to be used in such cases will be furnished collectors; and, for statistical purposes and convenient reference, all such corporations, companies, and associations will be classified and listed according to the nature of the business carried on, as follows:

CLASS A — *Financial and commercial.* — Including banks, banking associations, trust companies, guaranty and surety companies, title insurance companies, building associations (if for profit), and insurance companies, not specifically exempt.

CLASS B — *Public service.* — Such as railroads, steamboat, ferryboat, and stage-line companies; pipe-line, gas, and electric-light companies; express, transportation, and storage companies; telegraph and telephone companies.

CLASS C — *Industrial and manufacturing.* — Such as mining, lumber, and coke companies; rolling mills; foundry and machine shops; sawmills; flour, woolen, cotton, and other mills; manufacturers of cars, automobiles, elevators, agricultural implements, and all articles manufactured wholly or in part from metal, wood, or other material; manufacturers or refiners of sugar, molasses, sirups, or other products; ice and refrigerating companies; slaughterhouse, tannery, packing, or canning companies, etc.

CLASS D — *Mercantile.* — Including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares, and merchandise.

CLASS E — *Miscellaneous.* — Such as architects, contractors, hotel, theater, or other companies, or associations, not otherwise classed.

When classified as above indicated the names of the various corporations, companies, and associations will be listed alphabetically, and will be numbered consecutively (commencing with No. 1 in *each* class), and in forwarding returns or papers subsequently rendered or submitted by such corporations or companies collectors will see that the same have placed thereon the designating class letter and number corresponding with those noted on the lists herein required to be furnished.

Special instructions regarding the form of return to be rendered by such corporations, and as to the preparation of assessment lists by collectors, will be issued in due season.

J. C. WHEELER,
Acting Commissioner.

Approved:
JAMES B. REYNOLDS,
Acting Secretary of the Treasury.

APPENDIX C.

(T. D. 1571.)

TREASURY DEPARTMENT REGULATION NO. 31.

REGULATIONS RELATING TO THE ASSESSMENT AND COLLECTION OF THE SPECIAL EXCISE TAX IMPOSED BY SECTION 38, ACT OF AUGUST 5, 1909, ON CORPORATIONS, JOINT STOCK COMPANIES, ASSOCIATIONS AND INSURANCE COMPANIES.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 3, 1909.

Here is inserted the full text of section 38 of Chapter VI, United States Statutes, 61st Congress, First Session, pp. 11, 112–118, all as set forth in Appendix A above.

ARTICLE I.

The attention of collectors and others is specially called to the fact that the tax imposed by this section of the law applies to all corporations, joint stock companies, associations, or insurance companies described (except those specifically exempted). without reference to the kind of business carried on, and that the tax is to be computed upon the NET INCOME of such corporations, joint stock companies, associations, and insurance companies, which shall be calculated by subtracting from the gross income received from all sources during the year certain deductions specifically set forth in the statute.

Every corporation, joint stock company, association, or insurance company not specifically enumerated as exempt shall make the return required by law, whether it may have net income liable to tax or not.

In the case of corporations, joint stock companies, associations, or insurance companies organized under the authority of the United States or any State or Territory thereof, including Alaska and District of Columbia, such net income relates not only to the business carried on within the confines of the United States, but to income received from business transacted in any foreign country as well. In case of corporations, joint stock companies, and associations organized under the authority of foreign countries the terms "Gross income," "Net income," and "Authorized deductions" relate only to business transacted within the United States or any State or Territory thereof.

ARTICLE 2. — *Gross income.*

The following definitions and rules are given for determining the gross income of the various classes of corporations:

1 A. *Banks and other financial institutions.* — Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax) derived from all other sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.

1 B. *Insurance companies.* — Same as 1 A above.

2. *Transportation companies.* — Same as 1 A above.

3. *Manufacturing companies.* — Gross income received during the year from all sources will consist of the total amount, ascertained through an accounting, that shows the difference between the price received for the goods as sold and the cost of such goods as manufactured. The cost of goods manufactured shall be ascertained by an addition of a charge to the account of the cost of goods as manufactured during the year of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax. In the determination of the cost of goods manufactured and sold as above such cost shall comprehend all charges for maintenance and operation of manufacturing plant, but shall not embrace allowances for depreciation of property nor for losses sustained which are to be taken account of in ascertaining the net income subject to tax under the proper heading in the authorized deductions.

4. *Mercantile companies.* — Gross amount of income received during the year from all sources consists of the total amount ascertained through inventory, or its equivalent, which shows the difference between the price received for goods sold and the cost of goods purchased during the year, with an addition of a charge to the account of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources inclusive of dividends received on stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax. In determining this amount no account shall be taken of allowances for depreciation of property, nor for losses sustained which are to be taken account of in ascertaining the net income subject to tax under the proper heading in the authorized deductions.

5. *Miscellaneous.* — Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax) derived from all other sources as shown by the entries on the books from January 1 to December 31 of the year for which return is made.

It will be noted from these definitions that gross income is practically the same as gross profits, the only difference being that gross income is more inclusive, embracing as it does not only gross profits of the corporation, joint stock company, and association itself, but also all amounts of income received from other sources. It is immaterial whether any item of gross income is evidenced by cash receipts during the year or in such other manner as to entitle it to proper entry on the books of the corporation from January 1 to December 31 for the year in which return is made.

Sale of capital assets. — In ascertaining income derived from the sale of capital assets, if the assets were acquired subsequent to January 1, 1909, the difference between the selling price and the buying price shall constitute an

item of gross income to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount of increment or depreciation representing the difference between the selling and buying price is to be adjusted so as to fairly determine the proportion of the loss or gain arising subsequent to January 1, 1909, and which proportion shall be deducted from or added to the gross income for the year in which the sale was made. But for the purpose of determining the selling price, as provided in this section, there shall be added to the price actually realized on sale any amount which has already been set aside and deducted from gross income by way of depreciation as defined in article 4 and has not been paid out in making good such depreciation on the property sold.

Where a corporation is engaged in carrying on more than one class of business, gross income derived from the different classes of business shall be ascertained according to the definitions above applicable thereto.

ARTICLE 3. — *Net income.*

Net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits. [In case of corporations, joint stock companies, and associations organized under the laws of a foreign country, "the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States"][a] (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations,

[a] The matter included in brackets [ ] relates to interest actually paid within the year on "*bonded or other indebtedness*," and should be read in connection with the preceding provision (art. 3) relating to such interest paid by corporations, joint stock companies, etc., organized in the United States.

joint stock companies or associations, or insurance companies, subject to the tax hereby imposed.

Section 38 further provides:

That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained (by making like deductions) from the gross amount of its income received within the year from business transacted and its capital invested within the United States and any of its Territories, Alaska, and the District of Columbia.

Also that:

In the case of assessment insurance companies the actual deposit of sums with state or territorial officers, pursuant to law, as additions to guaranty or reserve fund, shall be treated as being payments required by law to reserve fund.

Also (third paragraph) that:

There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars.

The net income, therefore, is the remainder of the gross income after making the specified deductions.

ARTICLE 4. — *Deductions.*

The specified deductions actually paid within the year, set forth in the statute and as described in article 3 preceding, shall include all proper items of expenses and charges under the respective heads as designated. The amount returned for ordinary and necessary expenses actually paid within the year out of income in maintenance and operation of the business and properties of the corporation should not, however, embrace allowances for depreciation of fixed property which are otherwise to be taken account of under the proper heading in the authorized deductions, nor expenses paid within the year and charged to such allowances for depreciation credited in the current year or in previous years. In ascertaining expenses proper to be included in the deductions to be made under this article, corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which the return is made.

It is immaterial whether the deductions are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books as to constitute a liability against the assets of the corporation, joint stock company, association, or insurance company making the return.

Losses. — The deduction for losses must be in respect of losses actually sustained during the year and not compensated by insurance or otherwise. It must be based upon the difference between the cost value and salvage value of the property or assets, including in the latter value such amount, if any, as has in the current or previous years been set aside and deducted from gross

income by way of depreciation as defined in the following section and not been paid out in making good such depreciation.

Depreciation. — The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation or in the ascertainment of gross income. This estimate should be formed upon the assumed life of the property, its cost value, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property or in the ascertainment of gross income, but must be made out of accumulative allowances deducted for depreciation in current and previous years.

ARTICLE 5. — *Inventories.*

It will be noted that an inventory or its equivalent of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year is essential in the case of certain corporations in order to determine the gross income, and in case of other corporations to determine their expenses of operation. Where such inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental statement shall be verified under oath by the treasurer or principal financial officer in submitting the same.

Where any item under any of the deductions is of an unusual nature a special explanatory note referring to such item shall be made and attached to the form at the appropriate place and made a part thereof by proper reference.

Paragraph 3 of said section 38 also provides:

And said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

Each return so made is required to set forth:

(*a*) The total amount of the paid-up capital stock of such corporations, joint stock companies or associations, or insurance companies, outstanding at the close of the year;

(*b*) The total amount of bonded and other indebtedness of such corporation, joint stock company or association, or insurance company, at the close of the year;

(*c*) The gross amount of the income of such corporation, joint stock company or association, or insurance company, received during the year from all sources, and if organized under the laws of a foreign country, the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia.

Such returns are also required to set forth the items claimed as deductions (Article 4), also the net income after such deductions have been made.

ARTICLE 6.

Under the authority conferred by this act forms of return have been prescribed, in which the various items specified in the law are to be stated.

Blank forms of this return will be mailed to collectors and should be furnished to every corporation, not expressly excepted, on or before January 1, 1910, and on or before January 1st of each year thereafter. Failure on the part of any corporation, joint stock company, association, or insurance company liable to this tax, to receive a blank form will not excuse it from making the return required by law, or relieve it from any penalties for failure to make the return in the prescribed time. Corporations not supplied with the proper forms for making the return should make application therefor to the collector of internal revenue in whose district is located its principal place of business. Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for.

Bookkeeping. — No particular system of bookkeeping or accounting will be required by the Department. However, the business transacted by corporations, joint stock companies, associations, or insurance companies must be so recorded that each and every item therein set forth may be readily verified by an examination of the books and accounts, where such examination is deemed necessary.

Calendar year. — As the law specifically provides that the tax imposed shall be computed on the net income during each "*calendar* year," returns of income based on any period other than the calendar year can not be accepted.

Corporations organized during the year or going into liquidation during the year should nevertheless render a sworn return on the prescribed form.

ARTICLE 7.

Collectors will see that as soon as each return made by any corporation is received a record on Form 632 is made, setting out the name of the corporation making the return, the nature of the principal business transacted, the location of principal place of business, with net income reported, and the date on which such return was received. The date of receipt in each case will be noted in the last column of that form, in which column the list on which assessment is made will also be noted. For this purpose the column so used

may be subdivided, or the date of receipt of such returns may be noted in red ink over the date entered therein as to such assessment list.

Any collector will, whenever it appears advisable to do so, request that a revenue agent be specially designated to collect and furnish this office with such other data as, in his judgment, is necessary to determine the actual amount of tax to be assessed against any corporation, joint stock company, or association which under the law set forth in these regulations is required to make return.

Such returns are required to be made not later than March 1 of each year, and any failure to comply with the law in this regard should be at once reported by the collector to the Commissioner of Internal Revenue.

To enable collectors to determine whether all returns due have been received, a careful canvass of each district should be made, and all corporations, joint stock companies, and associations subject to the tax imposed should be listed as above directed.

ARTICLE 8.

For statistical purposes all such corporations, joint stock companies, and associations will be classified as follows:

CLASS A: *Financial and commercial.* — Including banks, banking associations, trust companies, guaranty and surety companies, title insurance companies, building associations (if for profit), and insurance companies, not specifically exempt.

CLASS B: *Public service.* — Such as railroads, steamboat, ferryboat, and stage-line companies; pipe line, gas, and electric-light companies; express, transportation, and storage companies; telegraph and telephone companies.

CLASS C: *Industrial and manufacturing.* Such as mining, lumber, and coke companies; rolling mills; foundry and machine shops; sawmills; flour, woolen, cotton, and other mills; manufacturers of cars, automobiles, elevators, agricultural implements, and all articles manufactured wholly or in part from metal, wood, or other material; manufacturers or refiners of sugar, molasses, sirups, or other products; ice and refrigerating companies; slaughterhouse, tannery, packing, or canning companies, etc.

CLASS D: *Mercantile.* — Including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares, and merchandise.

CLASS E: *Miscellaneous.* — Such as architects, contractors, hotel, theater, or other companies, or associations, not otherwise classed.

When classified as above indicated the names of the various corporations, companies, and associations will be listed alphabetically, and will be numbered consecutively (commencing with No. 1 in *each* class), and in forwarding returns or papers subsequently rendered or submitted by such corporations or companies collectors will see that the same have placed thereon the designating class letter and number corresponding with those noted on the lists herein required to be furnished.

ARTICLE 9. — *Examination of books, etc., by revenue agents.*

Paragraph 4 of said section 38 provides:

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief

that the return made by any corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company, has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

ARTICLE 10. — *Assessment and collection of tax, etc.*

Paragraph 5 of said section 38 provides:

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty percentum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the

discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Upon the receipt and verification of the returns rendered, the tax as ascertained to be due will be assessed as above prescribed; and notice of such assessment will be given and subsequent demand made (if necessary) on Forms 17 and 21, respectively.

In case of failure to make returns within the time and manner required by the statute, or where the return rendered is found or believed to be incorrect, action in such cases will be taken, as provided in paragraph 4 of the law.

The additional tax imposed by paragraph 5 of the law for failure to make the required return, or for making a false or fraudulent return, will in all cases be assessed as therein provided.

ARTICLE 11. — *Returns to constitute public records.*

Paragraph 6 of said section 38 provides:

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

ARTICLE 12. — *Penalties.*

Paragraphs 7 and 8 of section 38 provide:

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be

imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

ARTICLE 13. — *Certain revenue laws made applicable, and jurisdiction conferred on United States courts to compel attendance of witnesses, etc.*

Paragraph 8 further provides:

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

ARTICLE 14. — *Collection of tax.*

The tax assessed under the provisions of this act will be collected and will be receipted for on Form 1, as in the case of other assessed taxes. Unless paid within the time fixed by the statute, notice and demand should be at once issued, and, in case of nonpayment, distraint proceedings should be instituted without delay.

ROYAL E. CABELL,
Commissioner.

Approved:
FRANKLIN MACVEAGH,
Secretary of the Treasury.

APPENDIX D.

(T. D. 1578.)

TREASURY DEPARTMENT REGULATION.

EXCISE TAX.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER INTERNAL REVENUE,
Washington, D. C., January 4, 1910.

To collectors of internal revenue and others interested:

Many inquiries have been made at this office concerning the requirements of section 38, act of August 5, 1909, levying an excise tax of 1 per cent of the total net income over $5,000 of corporations, as to the time that must me covered by the returns of such corporations.

In order that the position of this office may be known to all interested in this subject, attention is invited to the language of the act bearing on this point. Subdivision 3 reads, in part, as follows:

* * * and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter.

From this it will be seen that the law fixes the calendar year as the period to be covered by these returns, and no one is vested with discretionary power to change it.

Many inquiries have been submitted as to the manner of arriving at an inventory January 1, 1909, when none was taken on that date and where the fiscal year of the corporation ends with a date other than December 31.

In article 5 of Regulations No. 31 it is stated that an inventory or its equivalent of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year is essential in the case of certain corporations in order to determine the gross income, and in case of other corporations to determine their expenses of operation. Where such inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental statement shall be verified under oath, etc.

Under the statute no return for a period other than the calendar year can be accepted. The primary object to be kept in view is the preparation of a statement or return which shall correctly set forth the net income taxable under the law. If this can be accomplished without the necessity of an inventory, either at the beginning or the close of the calendar year, actual inventories are not necessary. If, however, a statement such as may be verified by oath of the officers of the corporation, showing the net taxable income, can not be made without an inventory, then the same is necessarily required.

It is believed that corporations whose business is of sufficient volume to produce a taxable income under this law would ordinarily keep such books as

would enable them to arrive at a book inventory, or what might be termed the "equivalent" of an inventory, for the period between the 1st of January and the end of their fiscal years. While the office is unable to set forth any rule in this connection for arriving at inventories or their equivalents, the corporations will readily see the necessity of resorting to the best means at their hands to show in their sworn returns their net taxable income.

ROYAL E. CABELL,
Commissioner.

APPENDIX E.

(T. D. 1583.)

TREASURY DEPARTMENT REGULATION.

SPECIAL EXCISE TAX.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 18, 1910.

In view of the fact that the tax imposed by section 38 of the act of August 5, 1909, is not upon the property or income of corporations, joint stock companies, etc., but is a special excise tax to be measured by the annual net income of such corporations, etc., it is held, conformably to the opinion of the honorable Attorney-General, to whom the question has been submitted —

That in computing the amount of the gross income corporations owning United States bonds should include the interest received thereon, and that such interest should not be deducted from the gross income for the purpose of ascertaining the net income, which serves as a basis for computing the amount of taxes to be paid.

ROYAL E. CABELL,
Commissioner.

Approved:
CHARLES D. HILLES,
Acting Secretary of the Treasury.

APPENDIX F.

(T. D. 1588.)

TREASURY DEPARTMENT REGULATION.

RETURNS OF CORPORATIONS.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1910.

SIR: Your letter dated the 19th instant has been received, in which you ask certain questions relative to making returns under the provisions of section 38, act of August 5, 1909. You state:

In the first place, relative to a manufacturing company, in your paragraph 3 on page 8 of the laws and regulations, you say: "Cost of goods manufactured shall be ascertained by the addition of a charge to the account of the cost of goods as manufactured during the year of the sum in the inventory at the beginning of the year, and a credit to the account of the sum in the inventory at the end of the year." Does this mean that the cost must be ascertained from the price of the raw materials and the amount of labor expended, irrespective of overhead charges, or should overhead charges be included in the cost, and should the addition then be made to the total net worth of the concern as shown by the inventory of the previous year and that subtracted from the net worth of the concern at the end of the year; or in what way is this section construed?

In reply, you are advised that for the purpose of making a correct return in accordance with the provisions of section 38 of the act of August 5, 1909, it is necessary to follow closely the well-established commercial rules for keeping the accounts of the business of manufacturers. In keeping such accounts in a scientific manner it is well understood by all bookkeepers that if an inventory is taken on December 31, the end of the calendar year, the credits entered as balances in the several ledger accounts show the assets that such corporation has on hand, and hence the instructions in "Note A" at the bottom of the printed Form 637 state that "the cost of the goods manufactured shall be ascertained by an addition of a *charge* (debit) to the account of the cost of the goods as manufactured during the year of the sum of the inventory at the beginning of the year." All credit balances above referred to are transferred to the debit side of such accounts when the same are reopened on commencing business on the first of the year, and the "addition of a charge," as noted above, is thus made to the several accounts that are debited with the cost of goods manufactured during the year. The credit to the account is then made at the close of the year when the inventory is taken.

The provisions of the law require—

1. That the return shall show the gross income (profit) received during the year, which is reported in item 3 on Form 637.

2. All the necessary expenses in the maintenance and operation of the business and properties, which include labor, fuel, rentals, insurance, etc., shown in item 4.

3. Losses sustained during the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation, shown in item 5, *a* and *b*.

4. Interest on bonded or other indebtedness to an amount not exceeding the paid-up capital stock, shown in item 6.

5. All sums imposed for taxes during the year, shown in item 7.

6. All amounts received by it as dividends upon stock of other corporations, etc., subject to the tax imposed, as shown in item 8.

To make a correct return it is necessary for the accountant to know —

1. The exact resources and liabilities of the corporation, both on January 1 and December 31 of the year covered by the same.

2. A full statement of the business transacted during the year.

For example: If a manufacturing corporation has on hand at the beginning of the year as resources, raw materials, materials in process, finished product, cash, bills receivable, accounts receivable, etc., making up the total assets of the company, a business transaction that results in exchanging these assets, or any part of them, for anything of equal value does not produce income.

Raw materials, being of the capital assets of the company, are changed in form by the addition of different items of expense to produce another form of asset, the finished product, and hence the method of making up the return is as follows: The gross income from the manufacturing business reported in item 3 consists of the difference between the cost of the assets as material and the selling price of the assets as finished product. The selling price of the finished product is ascertained as follows: The cost of the raw material plus all expenses shown in items 4, 5, 6, and 7, plus per cent of profit, and while all these items of expense are as surely a part of the finished product as is the value of the raw material, yet as such items are expenses and not assets they are segregated and reported as deductions in items 4, 5, 6, and 7 in order to assist the government officer in his comparison and verification of the accuracy of the return.

In making up the gross income to be reported in item 3, the cost of the goods manufactured shall be ascertained by the addition of a *charge* to the account of the cost of the goods as manufactured during the year of the sum of the inventory at the *beginning* of the year, and a *credit* to the account of the sum of the inventory at the *end* of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations subject to this tax.

In making the inventory on December 31 of each year the appreciation or depreciation in the value of the raw material on hand should be ascertained, as well as that of the finished product, and this loss or gain, as the case may be, is included in the account of the closing calendar year. These articles, the raw material, material in process of manufacture, and the finished product, constitute at the beginning of the year succeeding the inventory the capital assets of the company, and hence, under the rule in paragraph 2, page 9, of Regulations 31, any increase or decrease in value accruing at a time prior to January 1 of the calendar year for which return is made can not be taken as a part of the gross income for that year, but, as noted above, such increase or decrease in value should be included in the account of the prior calendar year.

The rules, as hereinbefore stated, relative to manufacturing corporations

also apply to mercantile corporations, and it is not at all material in making a return for the year 1909 if, as you state, the goods were purchased prior to that time. On January 1, 1909, the goods referred to constitute capital assets at the invoiced value, and only the profits on the same, if sold during the year, are taken as gross income, or if not all sold during the year gross income is found by an addition to the credit side of the account of the sum of the inventory at the close of the year.

When a book account is known to be worth less than its face value and the loss is evidenced by an entry on the debit side of the loss and gain account in the books of the corporation, thereby decreasing the gross profit during the year, the amount of such loss is a proper deduction in item 5 of the return.

The making of an accurate return in accordance with the law and the regulations should present no difficulties to an expert bookkeeper and accountant who has made a careful study of the subject.

Respectfully,

ROYAL E. CABELL,
Commissioner.

Mr. ——— ———.

APPENDIX G.

(T. D. 1592.)

TREASURY DEPARTMENT REGULATION.

EXCISE TAX.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 5, 1910.

To collectors of internal revenue and others:

The attention of collectors of internal revenue and others is called to the provisions of section 38 of the act of August 5, 1909, requiring corporations, joint stock companies, associations, and insurance companies, subject to the special excise tax therein imposed, to render the prescribed return of their gross and net income for the calendar year 1909, on or before the 1st day of March, 1910; and to the penalties imposed by the eighth paragraph of said section 38 for neglect or refusal to render such return, or for rendering a false or fraudulent return.

On receipt of this circular, collectors will, so far as possible, and without further expense to the government, see that notice of these provisions of the law is given through the public press to all such corporations, joint stock companies, associations, and insurance companies.

Where the prescribed returns are received after March 1, 1910, the envelopes bearing postmarks showing the time of mailing shall be preserved, each attached to the return contained therein and forwarded as a part thereof to this office.

As stated in article 6 of Regulations 31, blank forms for making the required returns will be furnished, on application, by collectors of internal revenue; and a failure to receive such blanks and to make the required return within the prescribed time will not relieve the corporation, joint stock company, association, or insurance company from the penalties imposed for a failure to make such return.

ROYAL E. CABELL,
Commissioner.

APPENDIX H.

(T. D. 1594.)

TREASURY DEPARTMENT REGULATION.

EXCISE TAX — PUBLICITY CLAUSE.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 17, 1910.

To all collectors of internal revenue, agents, employees, and others concerned:

Many communications have been received at this office making inquiry as to how the returns of corporations, joint-stock companies, associations, and insurance companies, made as required under the provisions of the corporation excise-tax law (section 38 of the tariff act of August 5, 1909), were to be handled in the office of the Commissioner of Internal Revenue, and whether or not they were to be open to general inspection.

The law, paragraph 6, on this subject is as follows:

6. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Congress appropriated $100,000 to carry into effect the provisions of the law. Under general statutes no portion of this appropriation is available for use in the District of Columbia. The returns can not be open to general inspection in the District of Columbia without the expenditure of a substantial sum of money. If, therefore, it was the intent of Congress to make these returns open to general inspection, it will be necessary for it to appropriate a sum sufficient to cover the necessary expenses. Until this is done this bureau rules that the returns made under this law are to be handled just as returns made under other internal-revenue statutes.

Any person, therefore, other than the taxpayer making the return, or his duly appointed agent or attorney, who desires to see such return shall make written application to the Secretary of the Treasury, who in his discretion will, upon a proper showing of cause, approve such request. A request thus approved should then be presented to the Commissioner of Internal Revenue, who will thereupon permit the return in question to be seen by the applicant upon such conditions as the Secretary of the Treasury shall have imposed.

ROYAL E. CABELL,
Commissioner.

Approved:
CHARLES D. NORTON,
Acting Secretary of the Treasury.

APPENDIX I.

(T. D. 1595.)

TREASURY DEPARTMENT REGULATION.

SPECIAL EXCISE TAX.

INDEBTEDNESS SECURED BY MORTGAGE ON REAL ESTATE PURCHASED BY CORPORATIONS.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 28, 1910.

To the collectors of internal revenue and others concerned:

In an opinion rendered by the Attorney-General to the Secretary of the Treasury on the question of interest on indebtedness secured by mortgages on real estate, which real estate is owned by corporations, it is held that, under the provisions of the statute, interest can be allowed as a deduction only to the amount of the paid-up capital stock, and that where a company purchases real estate and assumes the indebtedness, this indebtedness stands on the same footing as any other. The Attorney-General holds, however, that where a company purchases merely the equity in real estate and does not assume outstanding indebtedness evidenced by mortgages against the corpus of the property, that such prior outstanding mortgages are not indebtedness contemplated under the statute, as such obligations do not constitute indebtedness of the company itself; consequently interest on such mortgages can be allowed as a charge required to be made as a condition to the continued use or possession of property.

ROYAL E. CABELL,
Commissioner.

APPENDIX J.

(T. D. 1600.)

(Foreign steamship companies engaged in transporting freight or passengers between American and foreign ports.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 14, 1910.

To collectors of internal revenue and others concerned:

In an opinion rendered by the Attorney-General, to whom the question was referred, it is held that as the provisions of section 38 of the act of August 5, 1909, imposing a special excise tax, are made applicable to corporations organized under the laws of a foreign country and receiving income from business transacted and capital invested in the United States, these provisions include foreign steamship companies having agencies in this country and engaged in the business of transporting passengers, freight, or mail; that as the tax so imposed is not upon the property of the corporation or the income derived therefrom, but is "a special excise tax with respect to the carrying on or doing of business," such tax, as applied to the business so carried on by such foreign steamship companies is not upon exports or upon the income derived from the transportation of such exports.

ROYAL E. CABELL,
Commissioner.

APPENDIX K.

(T. D. 1606.)

SPECIAL EXCISE TAX.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 29, 1910.

The following synopsis of decisions made, from time to time, on questions relating to the special excise tax imposed by section 38, act of August 5, 1909, on corporations, joint stock companies, associations and insurance companies, is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL,
Commissioner.

Class of Corporations, etc., Subject to Tax.

1. The tax imposed by the act applies to all corporations, etc., described, except those specifically exempted, without reference to the kind of business carried on.

2. Every corporation, etc., not specifically enumerated as exempt, shall make the return required by law, although its net income during the year may not have exceeded $5,000.

3. Corporations claiming special exemption should nevertheless make return (in blank if desired) accompanied by a statement setting forth the ground on which exemption is claimed.

4. Corporations, etc., organized during the year or going into liquidation during the year should nevertheless render a sworn return on the prescribed form. The tax imposed, however, is held not to apply to corporations which went out of existence prior to the passage of the act.

5. Where company has dissolved and the required return is not made by its officers, such return will be prepared by commissioner.

6. Where corporation has gone into bankruptcy, returns in such cases to be made by trustee in bankruptcy.

7. Railroad companies operating leased or purchased lines to include all receipts derived therefrom, and if bonded indebtedness has been assumed may deduct interest thereon to an amount not exceeding its own paid up capital stock. If such subsidiary companies receive income in the way of rentals etc., return to be also made by such companies.

8. Corporations, etc., organized under the authority of the United States or any State or Territory thereof, or Alaska, or the District of Columbia, to include in their returns not only the income derived from the business carried on within the confines of the United States, but income received from business transacted in any foreign country as well.

9. Corporations having branch or subsidiary companies to include in their returns the income of all such companies.

10. Foreign companies having several branch offices in the United States should each designate one of such branches as its principal office, and should also designate the proper officers to make the required return.

11. Where a consolidation of two or more corporations has been effected during the year, and each or any such corporation subsequent to such consolidation collects prior existing debts, each such corporation should also make separate return and include therein all such collected debts, as also all income received during the year prior to the date of consolidation.

12. "Principal place of business" is held to mean the principal office where the company keeps its books from which the required return is to be prepared and not the place where the operating plant is located.

13. As the law specifically provides that the tax imposed shall be computed on the net income during each calendar year, returns of income based on any period other than the calendar year cannot be accepted.

14. Full amount of stock, as represented by the par value of the shares issued, to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation.

15. Capital stock is held to include both preferred and common stock.

16. Surplus and undivided profits not to be included in capital stock.

17. Holding companies, known as "Voting Trusts," receiving only dividends on stock held, and having no capital stock, etc., not liable.

18. Mutual savings banks having no capital stock not liable to tax imposed (Opin. Atty.-Gen. Feb. 14, 1910).

19. Co-operative dairies not issuing stock and allowing patrons dividends based on butter fat in milk furnished not liable.

20. Foreign steamship companies having no office in the United States whose vessels only occasionally touch at ports in the United States not regarded as doing business in this country within the meaning of the statute.

21. Companies organized in Porto Rico, and not engaged in business in the United States not subject to tax.

22. Corporations owning sugar or other plantations and disposing of the products thereof not entitled to exemption as agricultural organizations.

23. Corporations organized to sell provisions, etc., to stockholders and others not exempted.

24. Corporations organized for the purpose of holding real estate, to make return of income derived from the property so held.

25. National banks do not come within any of the exemptions named in the act.

26. "Agricultural organizations" held not to come within the statutory exemption, unless their chief object is the promotion or advancement of agricultural interest, and no part of the net income inures to the benefit of their stockholders.

27. Music hall association regarded as an insurance company and not as an agricultural association, and therefore liable to tax.

28. Exemption in favor of fraternal beneficiary associations does not apply to mutual fire insurance companies.

29. Limited partnership, if organized for profit and having a capital stock represented by shares, although no "certificates of stock" are issued, are liable to the tax imposed. (Opin. Attl.-Gen. Feb. 14, 1910.)

30. Building and loan associations not exempt if having a capital and loaning to others than members, *i. e.*, if doing a business akin to banking business.

31. Building and loan associations issuing stock on which dividends are guaranteed, held to be liable to tax imposed.

32. Interest received on government bonds to be included in gross income. (Opin. of Atty.-Gen. Jan. 13, 1910.)

33. Returns should be signed and verified by two of the officers designated in the law. Signing of one person holding two such offices not permitted. Agents for foreign steamship companies may sign the required returns, if so authorized by their companies.

34. Returns not required to have corporate seal affixed.

35. Returns filed with deputy collector regarded as having been filed with collector.

36. No form of protest prescribed. Any form of protest sufficient if filed before payment of tax. Right of protest not to be denied.

Inventories, Accounts, etc.

37. Where an inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental statement shall be verified under oath by the treasurer or principal financial officer submitting the same. (T. D. 1578.)

38. Cost of manufactured articles, or articles in process of manufacture, held to include original cost of materials used, plus cost of labor, etc.

39. Mortgaged real estate should be inventoried at its full value and amount of mortgage reported as indebtedness.

40. Profits realized on sale of real estate during year, also increase in value of unsold property, to be included in income.

41. Receipts during year from lands sold on instalment to be included in gross income for that year.

42. Receipts from sale of patent rights to be included in income.

43. No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations, etc., must be so recorded that each and every item therein set forth may be readily verified by an examination of the books and accounts where such examination is deemed necessary.

Deductions, Expenses, etc.

44. It is immaterial whether the deductions are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books as to constitute a liability against the assets of the corporation, etc., making the return.

45. Mortgage indebtedness on real estate, if assumed by the corporation acquiring such real estate, to be included in the indebtedness of the corporation. But if not so assumed and remains only as a lien on the property, interest paid thereon may be deducted as a charge, "made as a condition to

the continued use or possession of the property." (Opin. Atty.-Gen. Feb. 21, 1910.)

46. Cost of erecting building, if included in lease under which property is held by company, is a proper deduction, to be prorated according to time fixed by lease.

47. General expenses such as coal, ship stores, etc., of foreign steamship companies, to be prorated as provided in act for interest deductions.

48. Amount received by nursery companies from sales of trees, etc., less amount expended for seedlings and young trees, to be included in gross income. Amount expended for labor, salesmen, etc., to be deducted as expenses.

49. Commissions allowed salesmen, paid in stock, may be deducted as expense if so charged on books.

50. Sales of stock and bonds are regarded as sales of capital assets and should be so accounted for. (Art. 2, regs. 31.) But proceeds derived from sale of bonds used in defraying ordinary and necessary expenses are a proper deduction in determining the company's net income.

51. Stock issued in payment of property purchased, represents capital, investments, and notes issued during the year represent indebtedness. Corporate funds applied to the payment of outstanding notes not a proper deduction in ascertaining net income.

52. Amounts expended in betterments or repairs not a proper deduction. A reasonable allowance for depreciation of stock, etc., is permissible.

53. Betterments and repairs not proper deductions as expenses, the former being additions to the capital assets of the company and the latter being offset by allowance for depreciation.

54. Cost of replacing old rails, structures, etc., not regarded as ordinary and necessary expenses. Depreciation during the year will be allowed, however, in such cases.

55. Dividends received by corporations on stock of other corporations whose net income does not exceed $5,000 is nevertheless a proper deduction under the law. (Opin. Atty.-Gen. Jan. 24, 1910.)

56. Dividends received on stock of foreign corporations not subject to tax not a proper deduction.

57. Dividends paid employees in lieu of wages not proper deduction as expenses.

58. Royalties on patent rights to be reported as income. Allowance for depreciation of patents expiring during year, however, will be allowed.

59. Pensions paid or gifts made to employees are gratuities, and not "ordinary and necessary expenses."

60. Where allowances on account of salaries are deemed excessive and for the purpose of evading the tax due investigation will be made, and if the facts warrant, prosecution will follow.

61. Interest paid on time deposits subject to check constitutes a proper deduction from the amount of gross income during the year.

62. Interest on portions of bonded or other indebtedness bearing different rates of interest may be deducted from gross income during the year, provided the aggregate amount of such indebtedness does not exceed the paid-up capital stock of the corporation.

63. Interest paid during the year on notes given prior to January 1, 1909,

to be prorated. But interest on notes given in 1909 and payable subsequent to December, 1909, unless charged on the company's books is not a proper deduction from the income of that year.

64. Interest or taxes accruing prior to the year for which return is made is not a proper deduction from the gross income for that year.

65. Unearned premiums set aside by insurance companies as reserve not to be included as income until earned.

66. Funds set aside by company, for insuring their own property not a proper deduction.

67. As the tax imposed is measured by and is not a tax upon the net receipts of corporations, etc., interest received during the year on government bonds is not a proper deduction from such income in determining the amount of the tax due. (Opin. Atty. Gen. T. D. 1583.)

68. State, county or municipal taxes paid during the year a proper deduction in ascertaining the net income of corporations.

69. Import duties or taxes, if included in arriving at cost of goods, are not deductible under the head of taxes paid during the year.

70. Bad debts, if so charged off the company's books during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income.

Depreciation.

71. Where increase or decrease during the year in the value of real estate acquired in previous years, sold or held for sale, cannot be accurately determined, such increase or decrease may be prorated, as provided by regulations in cases of sale of capital assets.

72. Depreciation in value of mines by the removal of ore, if not otherwise ascertainable, may be prorated as in the case of sales of capital assets.

73. Depreciation in value of mines by the removal of ore, if in excess of five per cent. of investment, to be explained in return rendered.

74. Estimated depreciation in oil or gas wells, buildings, machinery, etc., to be stated in detail, if exceeding five per cent. of value as previously inventoried.

75. Corporations leasing mines and paying royalties on ore mined not entitled to deduction for depreciation. But corporations owning mines are entitled to allowance for depreciation based on fair estimate, etc.

76. Removal of timber from timber lands, while depleting the lands to the extent of such removal, is regarded as a charge in the form of assets, and not a depreciation within the meaning of the act.

77. Deduction on account of depreciation of property must be based on life time of property, its cost, value and use.

78. Voluntary removal of buildings, etc., for purpose of improvements not regarded as loss or depreciation, and no deduction therefor should be made.

79. Depreciation of company's stock a loss to the stockholders, but not a loss to the company issuing the same, and therefore not a proper deduction.

ROYAL E. CABELL,
Commissioner.

APPENDIX L.

(T. D. 1611.)

TREASURY DEPARTMENT REGULATION.

EXCISE TAX.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 4, 1910.

To collectors of internal revenue, revenue agents, and other internal revenue officers:

It appears that there are in Massachusetts, and perhaps elsewhere, various organizations known as "associates," "trusts," or "real-estate trusts," which are not organized under a charter but are formed by an agreement and declaration of trust. It appears that the title to the property or business owned or operated by these organizations is vested in one or more trustees, and certificates are issued to parties in interest as are shares of stock of incorporated concerns, the certificates being traded in as are shares of stock and the trustees being elected and their successors chosen as are directors in any corporation regularly chartered. The organization is one for profit and it possesses all of the essential elements of any joint-stock company.

In reply to a request from the Secretary of the Treasury as to the status of these organizations, in regard to the corporation excise-tax provisions of the tariff act of August 5, 1909, the honorable Attorney-General advises that these concerns are joint stock companies or associations organized for profit and having a capital stock represented by shares, and are amenable to the provisions of the corporation excise-tax law.

Collectors of internal revenue, in whose districts there may be located organizations of this character, will see that such organizations comply with the provisions of this law.

ROYAL E. CABELL,
Commissioner.

APPENDIX M.

(T. D. 1615.)

TREASURY DEPARTMENT REGULATION.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 15, 1910.

To collectors of internal revenue and others concerned:

Under date of April 2d, 1910, the Attorney-General rules in answer to queries presented by the Secretary of the Treasury, that any corporation which was engaged in business after the approval of the act of August 5th, 1909, is amenable to the excise tax provided for under section 38 of the act, to the effect that a corporation engaged in business subsequent to August 5th, 1909, and lawfully dissolving itself and distributing its assets prior to December 31, 1909, is immaterial.

The Attorney-General rules that where there is no provision in the corporation excise tax which creates a lien upon the property of a corporation subject to the tax, section 3186, Revised Statutes of the United States, as amended by the act of March 1, 1899, which provides that, "If any person liable to pay any tax, neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid with interest, penalties and costs that may accrue in addition thereto upon the property and rights belonging to such person," is applicable and the lien of this corporation excise tax attaches as provided therein.

If the corporation has distributed all its assets and become dissolved in the manner provided for by law, prior to the time when the list of assessments came into the hands of the collector at that time there would be no corporation nor assets, and nothing upon which the lien could attach, and consequently no lien would then exist to secure payment of the taxes. In such event the government may resort to the common law method of collecting the tax in accordance with the holding of the Supreme Court of the United States in Savings Bank *v.* United States, 19 Wall. 227, 240. This decision holds that the dissolution of a corporation does not extinguish its liabilities, and consequently the government may in such event collect the tax by pursuing the assets of the corporation into the hands of the stockholders, or into the hands of any person not a *bona fide* purchaser in the same manner by which any other creditor might obtain satisfaction of his debt.

ROYAL E. CABELL,
Commissioner.

APPENDIX N.

(T. D. 1616.)

DIVULGING INFORMATION OBTAINED BY INTERNAL REVENUE OFFICERS IN THEIR OFFICIAL CAPACITY — DECISION IN STEGALL v. THURMAN.

1. *Regulations, force and effect of.* — Regulations issued by the Secretary of the Treasury with reference to the internal revenue and for the government of the officers of the revenue bureau have the force and effect of law and are as binding as if incorporated in the statute law of the United States.

2. *Witnesses — Information obtained by internal-revenue officers or agent.* — Under the regulations of the Internal-Revenue Bureau promulgated with the approval of the Secretary of the Treasury, providing that officers of the bureau "will decline to testify as to facts contained in the records, or coming to their knowledge in their official capacity; and this prohibition is hereby extended to include also internal-revenue storekeepers and gaugers and agents," a storekeeper and gauger stationed at a distillery has no right to divulge information in regard to the business of the distiller obtained by him solely in his official capacity as an internal-revenue officer, even when called as a witness in a State court.

3. *Habeas corpus — Discharge by federal court.* — Where an officer of the Internal-Revenue Bureau is imprisoned for contempt for a refusal to testify in a State court or before a grand jury with respect to facts learned by him in his official capacity which he is prohibited from divulging by the regulations of the bureau, the case is one of urgency, in which a federal court is not required to await the final action of the State court, but should discharge the prisoner on a writ of *habeas corpus*.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 16, 1910.

The appended decision of the United States District Court, Northern District of Georgia, in the case of Stegall *v.* Thurman, sheriff and jailor, is published for the information of internal revenue officers and others concerned.

ROYAL E. CABELL,
Commissioner.

PROCEEDINGS BY CHARLES E. STEGELL *v.* R. W. THURMAN, SHERIFF AND JAILOR, OF DADE COUNTY, GA., FOR WRIT OF HABEAS CORPUS — DECIDED JANUARY 27, 1910.

NEWMAN, District Judge. — Application was made by Charles E. Stegall, in this court, for the issuance of a writ of *habeas corpus* to be directed to R. W. Thurman, sheriff and jailer, of Dade county, Ga. The petition of Charles E. Stegall alleges: That he was a storekeeper and gauger, assigned for duty at Distillery No. 3, of George W. Cureton, at Rising Fawn, in Dade county, Ga. That he was subpœnaed to appear as a witness before the grand jury of the Superior Court of Dade county, to testify on behalf of the State touching

the operations of said distillery. That he declined to answer certain questions propounded to him, upon the ground that all the knowledge he had as to the operation of Cureton's distillery was obtained and came to him from the records of the Internal Revenue Department, or was obtained by him solely and only in his official capacity as storekeeper and gauger. Thereupon, and on account of his declining to answer, he was committed for contempt, and was in jail when the writ was issued. Return was made, the body of the petitioner produced, and an answer filed by the sheriff.

Upon the hearing, an agreement was made by counsel as to some of the facts, and brief testimony taken as to others. It is agreed now that the question put to Stegall before the grand jury, and on which the present decision turns, was this: Referring to George W. Cureton's distillery, "What is being manufactured at that place?" and the inquiry is whether, under the facts, Stegall should have been required to answer that question, or whether, in refusing to answer, he exercised a right under the laws of the United States and the rules and regulations of the Treasury Department, which right would authorize his discharge under this *habeas corpus* proceeding.

* * * * * * * * * * *

It is not denied, as I understand it, that the only knowledge Stegall had of what was being done at Cureton's distillery was knowledge which he obtained while there in his official capacity as storekeeper and gauger, and it is not claimed that Stegall had any knowledge except such as he obtained while there officially. The contention on behalf of the sheriff is, notwithstanding the fact that Stegall was at the distillery only in his official capacity, that he had personal knowledge, knowledge as an individual, of what was being done at the distillery — that is to say, the contention is he saw as an individual, notwithstanding his presence as an official. Is this contention sound? That is the question for determination here.

Section 3167, Revised Statutes of the United States (U. S. Comp. St. 1901, p. 2058), is as follows:

(Section 3167, R. S., quoted; sections 161, 251, and 3215, R. S., quoted; Regulations contained in No. 12, revised, issued by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, quoted; Internal Revenue Circular No. 583, October 10, 1900 (T. D. 226), "Forbidding disclosure of information contained in official record," quoted. Boske *v.* Comingore, 177 U. S. 459, referred to.)

It may be proper to inquire, first, whether these regulations are authorized by law, and in accordance with law. It is fully settled in many cases that the regulations issued by the Secretary of the Treasury with reference to the question of internal revenue, and for the government of the officers of the Revenue Department, have the force and effect of law, and are as binding as if incorporated in the statute law of the United States. United States *v.* Barrows, 1 Abb. (U. S.) 351; 24 Fed. Cas. No. 14,529; United States *v.* Hutton, 10 Ben. (U. S.) 268; 26 Fed. Cas. No. 15,433; In re Huttman (D. C.), 70 Fed. Rep. 699; In re Weeks (D. C.), 82 Fed. Rep. 729; United States ex rel. Flynn *v.* Fuellhart (C. C.), 106 Fed. Rep. 911; In re Lamberton (D. C.), 124 Fed. Rep. 446; Boske *v.* Comingore, supra; Ex parte Reed, 100 U. S. 13; 25 L. Ed. 538; Gratiot *v*, United States, 4 How. 80, 11 L. Ed. 884.

In concluding the opinion in Boske *v.* Comingore, supra, Mr. Justice Harlan

says, in reference to the promulgation of regulations by the Secretary of the Treasury for collectors of internal revenue:

In determining whether the regulations promulgated by him are consistent with law, we must apply the rule of decision, which controls when an act of Congress is assailed as not being within the powers conferred upon it by the Constitution — that is to say, a regulation adopted under section 161 of the Revised Statutes should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law. Those who insist that such a regulation is invalid must make its invalidity so manifest that the court has no choice except to hold that the secretary has exceeded his authority, and employed means that are not at all appropriate to the end specified in the act of Congress.

I do not understand it to be contended here, however, that these regulations are inconsistent with law. No attack is made in argument upon these regulations. What is insisted strongly and earnestly is that the individual may be separated, as it were, from the official. What he discovers by the use of his senses, what he sees with his eyes, it is urged, he may tetify to; that he knows it as an individual, although as an official he was on the spot and acting in the discharge of his duty as such official.

In the last regulation referred to (No. 12, of April 18, 1904) it will be perceived that, among other things, it is said:

They will decline to testify as to facts contained in the records, or coming to their knowledge in their official capacity; and this prohibition is hereby extended to include also internal revenue storekeepers and gaugers and agents.

Assuming this regulation to be within the authority of the Secretary of the Treasury under the statute, and thereby becoming law and controlling on storekeepers and gaugers, can a storekeeper and gauger testify to facts he ascertains at a distillery, when he is there only in his capacity as a storekeeper and gauger?

The District Courts have passed on similar questions on several occasions. *In re* Huttmann, *supra*, was decided by Judge Williams in the District Court of Kansas. This was a *habeas corpus* case, Huttmann being a deputy collector of internal revenue and having been committed for contempt for declining to answer certain questions propounded to him in the State court. * * *

In re Weeks, supra, was a decision by Judge Wheeler in the District Court of Vermont. This was a habeas corpus case also, Weeks being a deputy collector of internal revenue in Vermont. He was called upon to testify in the State court as to the purchase by certain persons of a retail liquor dealer's tax stamp. Weeks, declining to answer, was committed for contempt. . . .

In re Lamberton, supra, was also a habeas corpus case before Judge Rogers in the western district of Arkansas. * * *

The Comingore case was originally decided by Judge Evans in the District Court of Kentucky (In re Comingore (D. C.), 96 Fed. 552), and was affirmed by the Supreme Court in Boske *v.* Comingore (177 U. S. 459, 20 Sup. Ct. 701; 44 L. Ed. 846).

In re Hirsh (C. C.) (74 Fed. Rep. 928) is not in harmony with the foregoing decisions, in that it holds that a deputy collector of internal revenue should be required to produce his records before the court; but this case is

undoubtedly overruled by the decision of the Supreme Court in Boske v. Comingore, supra.

The foregoing authorities seem conclusive of the present inquiry. They establish the proposition, undoubtedly, that information obtained by a person solely in his official capacity as internal revenue officer cannot be divulged by him even when called as a witness in the state court. The method prescribed by the Secretary of the Treasury for courts obtaining this information is an application to the Secretary of the Treasury by the judge of the court in which the information is desired as to the operation of a distillery, when a certified copy may be obtained of the reports of the distiller, which will show fully and accurately all that has been done in any given distillery. * * *

The whole question comes to this: When a distillery is being operated, a storekeeper and gauger is placed there to ascertain the quantity of distilled spirits made at the distillery, in order that the Government may collect the taxes. They are under the provisions of the statute (R. S., sec. 3167) and the regulation of the Treasury Department, having the effect of law, as stated, that they shall not produce any records or testify as to the contents of records and, further, that they shall not testify as to facts "coming to their knowledge in their official capacity;" but the same regulation provides that information desired as to the operation of a distillery will, upon request of the court desiring such information, be furnished under the seal of the Treasury Department. If a change is needed, it must be made by Congress or by the Secretary of the Treasury. The courts cannot make or change law.

Stegall was placed in jail by the judge of the state court and fined $300 for declining to testify as to what was being done at Cureton's distillery, as stated above. He was actually in jail when the application for writ of habeas corpus was made and when the writ was issued. * * *

I have given this case the most careful examination and consideration, because its importance merits it. The courts of the United States will not lightly interfere with the action of the state court, and a case must be presented to make action imperative before such action will be taken.

I am compelled to enter an order that the petitioner be discharged.

APPENDIX 0.

(T. D. 1617.)

TREASURY DEPARTMENT REGULATION.

EXAMINATION OF BOOKS, ETC., BELONGING TO CORPORATIONS, ETC.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 19, 1910.

To Internal Revenue Agents.

The following instructions are issued for the guidance of internal revenue agents in the matter of examining the books and papers belonging to corporations, joint stock companies, associations and insurance companies subject to the special excise tax imposed by section 38, Act of August 5, 1909.

On receiving from the collectors, or from this office, a list of corporations, etc., which have failed to file the required returns, or which have filed defective or unsatisfactory returns, agents will at once proceed to make the investigation provided for in the fourth paragraph of said section 38. They will, in each case, after calling the attention of the proper officer of the corporation to the provisions of the statute, request the production of such "books and papers bearing upon the matters required to be included in the return of such corporation," as may be found necessary to make the examination here directed.

In most cases the errors in the returns rendered are probably due to misapprehension on the part of the officers of the corporation as to requirements of the law and regulations respecting the preparation of such returns. See T. D. 1606 for list of the various questions which have arisen under the law and the decisions thereunder.

In conducting their examination the agents will, except in glaring cases of misrepresentation, proceed on the assumption that all errors in the returns rendered are unintentional; and they will, so far as possible, make their examination in such matter as not to interfere with the company's business, either as to the use of its books, or in the general conduct of its officers. Contentions with officers, employees or representatives of corporations are to be carefully avoided, and no action that may cause friction, that is not necessary in the proper performance of their duties, must be indulged in by officers making these examinations.

Ordinarily no very extended examination of the company's books will be necessary as the verification of the particular items to which attention has been called will be sufficient. Where, however, an extended examination is found to be necessary, and the accounts are so kept as to involve much labor in their examination, the agent may assign two assistants for this purpose.

Where discrepancies between the company's books and the return made are discovered, the officers of the company should be given full opportunity to explain the same, and to furnish if so desired, a sworn statement in reference thereto. In such cases the agent will, if deemed necessary require the assistance of any officer or employee of the company, and there examine such officer

or employee respecting the matter under investigation as provided in section 38. The witnesses in such cases should be duly sworn by the agent, as especially provided in said section 38; and in case of refusal of any such officer or employee to testify, or in case of refusal to produce books or papers called for, the agent will at once report the fact to this office.

A separate report of the investigation of each case should be made and where an additional tax is found to be due, a copy of such report should be furnished the collector of the district.

The attention of agents and their assistants is specially called to paragraph 7 of said clause 38, making it unlawful for any officer or employee of the United States to divulge or make known in any manner not provided by law, any information obtained from any document received, evidence taken or report made under the provisions of that section.

ROYAL E. CABELL,
Commissioner.

Approved:

FRANKLIN MACVEAGH,
Secretary of the Treasury.

APPENDIX P.

(T. D. 1633.)

(ADDITIONAL NOTICE (FORM 17) TO BE SENT TO DELINQUENT CORPORATIONS.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 27, 1910.

As there appears to be some misunderstanding on the part of certain collectors in the matter of sending notices on Form 17, to corporations failing to pay their special excise tax on or before June 30, the attention of such collectors is specially called to mimeograph letter No. 660 of January 27, 1910.

As noted in that letter, notice on a modified Form 17 should be sent to each corporation assessed, on receipt of the assessment list, on or before June 1, 1910, as provided in paragraph 5, section 38, act of August 5, 1909; also a further notice on the regular blank Form 17, in case the assessed tax is not paid on or before June 30, 1910.

This additional notice is necessary by reason of the fact that the section further provides:

* * * "and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due * * *"

Collectors will therefore, in all cases, cause such additional notice to be sent to delinquent corporations immediately upon the expiration of the time fixed for the payment of the tax due, namely June 30.

ROYAL E. CABELL,
Commissioner.

APPENDIX P[1].

(T. D. 1634.)

STATE, COUNTY AND MUNICIPAL CORPORATIONS NOT LIABLE TO TAX UNDER THE FEDERAL CORPORATION TAX LAW.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 27, 1910.

SIR: — Yours of 24th instant is received, inquiring whether municipal corporations — that is, corporations absolutely owned by municipalities, and in which no shares are sold — are liable to tax under the federal corporation tax law.

In reply you are advised that in the opinion of this office it is clear that such corporations are not subject to this tax.

As a general rule, public property, whether belonging to the Federal Government, the various States, or the political subdivisions of such States or municipalities, is not subject to taxation. It has been held frequently that the exemption in favor of municipalities extend to gas works, water works, and electric light plants. While these public utilities may be and frequently are conducted by municipalities at a profit, the making of profit is not the main purpose, but rather the public service. They are not corporations "organized for profit." Moreover they are not corporations "having a capital stock represented by shares."

In order to render a corporation taxable under the act of August 5, 1909, it is necessary that it be such a corporation as is primarily organized for profit and has a capital stock represented by shares. Therefore, a State, county, or city furnishing its population with water, gas, or electric light would not, although charging for such service and acquiring a profit therefrom, be taxable under this act.

Respectfully
ROYAL E. CABELL,
Commissioner.

Mr. H. A. RUCKER,
Collector Internal Revenue, Atlanta, Ga.

APPENDIX Q.

(T. D. 1639.)

(ALL REGULAR LISTS AND ALL CORPORATION TAX LISTS REQUIRED TO BE TAKEN UP SEPARATELY HEREAFTER ON FORMS 51B, 79, AND 325.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 13, 1910.

To Collectors of Internal Revenue.

Hereafter on Form 51B collectors will report separately all regular lists and all corporation tax lists on which there are outstanding taxes at the beginning of the month. The collections on the corporation tax lists reported thereon must agree in the aggregate with the amount of corporation taxes reported collected on Form 22 and with the total of amounts indorsed on the certificates of deposit for the month.

In taking up a list, either corporation tax or regular, for the first time, the full amount thereof should be entered in the margin of the Form 51B for the month in which the Form 23½ is receipted, the amount of advance collections thereon previously reported should be placed underneath, and the net amount carried into the column headed "Taxes unaccounted for in previous report, new list, etc." (See first three paragraphs on page 22 of Regulations No. 2, revised July 1, 1908, and Note A on Form 51B.) Until a list has been made up in this office, returned to a collector and receipted for by him on Form 23½, he should report on Form 51B the advance collections only.

If a collector should not receive from this office his list for the first or second month, of a quarter before the end of that quarter, he should immediately, on the first day of the succeeding quarter, sign and forward to this office a report on Form 476 for the amounts collected in advance on that list, as under such circumstances he is properly chargeable on his quarterly account with the advance collections only. (See instructions relative to receipt on Form 476 for February, 1910, corporation tax list in Mim. 672, dated March 19, 1910.

Hereafter on Form 79 there should be interlined on line 3 immediately after the words "On Form 492" the amount of corporation taxes deposited during the quarter and the amount of other internal revenue collections deposited, and the total of these two items carried into the money column. The amount of corporation taxes deposited must agree with the total of the amounts reported on Forms 22 for the three months of that quarter.

On line 24 of Form 79 there should be entered separately each Form 23½ receipted during the quarter and each Form 476 receipted for advance collections made during that quarter.

Instructions herein given relative to 51B should be followed in the preparation of reports on Form 325.

ROYAL E. CABELL,
Commissioner.

APPENDIX B.

(T. D. 1651.)

FIVE PER CENT PENALTIES.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 27, 1910.

SIR: — Your letter of the 19th instant relative to the collection of 5 per cent penalty from the F——— Bank of D———, the P——— Cotton Mills, and the D——— Cotton Manufacturing Company, all of ————, North Carolina, has been received.

This matter has been given further and careful consideration and with the facts now presented to this office, in connection with an examination of the records and accounts on file, it appears that the taxes assessed against these corporations were not paid within ten days after mailing the prescribed notice within the meaning of the law.

The checks tendered you in payment of the taxes due were drawn by the corporations named above on the F——— Bank of D———, one of the taxpayers involved. While it may be true, as asserted by the taxpayers and as stamped by the F——— Bank, that these checks were paid to the collecting bank at Raleigh, July 2, 1910, there is no evidence that the proceeds were placed in your hands or to the account of the Government until July 13th. This is shown by your Form 325 for July, 1910, the stubs of receipts Form 1, numbered 876658, 87660, and 876663, and your certificate of deposit for July 13, 1910, No. 3093.

If the Citizen's National Bank of Raleigh received the amount of the taxes due, but failed to turn the same over to you to be placed to the credit of the Treasurer of the United States in time to avoid the liability to 5 per cent penalty as imposed by section 3184, Revised Statutes, holding the same eleven days, this unusual neglect on the bank's part is no valid reason why the penalty should not be demanded.

The Citizen's National Bank is not an agency for the collection of internal revenue taxes. This office, therefore, upon thorough consideration of the matter, can not hold with fairness that, because this bank is a Government depository, any laches on its part in the performance of business duties outside of its functions as such shall affect the interests of the Government, and therefore the rule laid down for your guidance in this matter in letter to you dated the 11th instant is hereby revoked.

The 5 per cent penalties should be collected in these and the other cases to which you refer in your letter of the 19th instant, and to which the same principle will apply.

Respectfully,

J. C. WHEELER,
Acting Commissioner.

MR. WHEELER MARTIN,
Collector Fourth District, Raleigh, N. C.

APPENDIX 8.

(T. D. 1654.)

REAL ESTATE SOLD UNDER WARRANT OF DISTRAINT.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 16, 1910.

SIR: — Upon examination of your report on Form 325 for August it appears from proper memoranda following balances outstanding against your September, 1909, list, that distraint sales were made on May 19, 1910, and July 15, 1910. In each of these cases there being no personal property belonging to the delinquents, real estate owned and occupied by said delinquents was seized under warrant of distraint, advertised and offered for sale to the highest bidder. There being no bidders, the deputy collector, acting for the collector, in conducting the sale, bid the said real estate in for the use of the United States, naming as the amount bid the amount of assessed taxes, accrued penalty and interest on the same and the cost of the sale. By this action the delinquents' debt to the United States was extinguished (see United States *v.* Triplitt, 22 Int. Rev. Rec. 207), and credit on the list and Form 325 should be taken.

In purchasing for the United States property offered for sale under distraint proceedings the offer making the sale is not required and should not bid the full amount due the United States unless the appraised or estimated cash value of the property exclusive of all prior liens, approximate at least double that amount.

As stated on page 36 of Regulations No. 12 revised —

Real estate seized under distraint and offered for sale should be offered at a minimum price, ordinarily one-half the cash value of the land, but in no case more than the tax, interest, and penalty, and all expenses of levy and sale, including all charges for advertising. If no person offers for said estate the amount of the minimum price the officer making the sale should bid the property in for the United States for no larger sum than is necessary to effectuate the object which is to prevent the sale for an inadequate price.

Respectfully,

J. C. WHEELER,
Acting Commissioner.

APPENDIX T.

(T. D. 1655.)

WHEN SO-CALLED MUTUAL BUILDING AND LOAN ASSOCIATIONS SHOULD MAKE THE REQUIRED RETURN AND WILL BE HELD SUBJECT TO THE TAX IMPOSED BY SECTION 38 OF THE ACT OF AUGUST 5, 1909. SEE ITEM 30, T. D. 1606.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 24, 1910.

SIR: — Your letter of the 20th instant relative to the special excise tax on corporations, has been received, in which you give a list of building associations in your district which have made affidavit that they are purely mutual associations; that they have not loaned, nor do they loan, to others than their members; and that their shareholders, both borrowers and non-borrowers, have credited to their several accounts their pro rata of all dividends declared by the associations, and that they are therefore exempt from the provisions of the act of August 5th, 1909, providing for the special excise tax on corporations, and in which letter you request permission to strike those corporations from the schedule in your office.

In reply, you are informed that it would appear that further information is necessary in some, if not all, of these cases.

It has been held that building and loan associations are not exempt, if they loan money to others than their members, thus doing a business similar to that engaged in by banks or trust companies. It is also held that building and loan associations which receive sums of money on deposit which is not in payment of stock, and on which the depositor receives a fixed rate of interest regardless of the earnings of the association, are conducting a business similar to a banking business, and are therefore subject to the special excise tax on corporations and should be required to make a return showing their net income.

In your list is given the name of the ————, which is known to receive deposits from shareholders and others on which a fixed rate of interest for the use of the money so deposited is paid. The money so received is loaned again at a rate of interest higher than that paid to depositors, from which it appears that a business for profit is being conducted. The practice of receiving deposits and paying a fixed rate of interest thereon also destroys the purely mutual nature of the association.

It is quite probable that there are others in the list conducting business along similar lines, and further inquiry should be made to ascertain the facts in each case, and a return should be required where your inquiry shall disclose the necessity therefor.

Respectfully,
J. C. WHEELER,
Acting Commissioner.

MR. P. L. GOLDSBOROUGH,
Collector Internal Revenue, Baltimore, Md.

APPENDIX U.

(T. D. 1656.)

INSTRUCTIONS RELATIVE TO PREPARATION OF ACCOUNT ON FORM 79.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 6, 1910.

To collectors of internal revenue.

There has been sent to each collector a supply of Forms 79, revised July 28, 1910, in accordance with 1907 Department Circular No. 52. All old blank Forms 79 should be destroyed as required by Regulations No. 2, revised, page 19, last paragraph, under "General Instruction Relative to Reports."

Beginning with the quarter ended September 30, 1910, the quarterly revenue accounts will be made out on the new form, even if accounts have been rendered on the old prior to the receipt of this letter.

On the new form separate columns are provided for the regular and the corporation tax lists, thus requiring an accounting for regular taxes, etc., and a distinct accounting for regular taxes, etc., and a distinct accounting for corporation taxes, etc.

On line 4 there will be entered in column 1 the amount of deposits on account of regular taxes collected, in column 2 the amount on account of corporation taxes collected, in column 3 the amount on account of special tax stamps sold, etc., and in the last column the total amount of deposits for the period for which the account is rendered.

On line 5 there will be entered in column 1 the amount of abatements on regular lists, and in column 2 the amount on corporation tax lists, and the total of the abatements for the period in the last column.

The method of making entries on the other lines will be similar to that for lines 4 and 5

Care must be taken to have each column in balance.

In the accounts of the various stamps no fractions should be used and amounts entered should state the actual value of stamps sold, returned, on hand, etc., to the nearest cent. All excesses arising in the sale of stamps on account of fractions should be carried to Form 58 of the regular list each month as directed in paragraph 5 of instructions on Form 79.

The amounts entered on line 11 should be verified by actual count.

The certificate at the bottom of the form and the first indorsement should be properly signed.

Record No. 32 will be revised to conform to new Form 79, and as soon as printed will be sent to each collector.

ROYAL E. CABELL,
Commissioner.

APPENDIX V.

(T. D. 1659.)

FIVE PER CENT PENALTY AND INTEREST ON DELAYED PAYMENTS OF ASSESSED TAXES.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 20, 1910.

To collectors of internal revenue.

In view of the provisions of the State (section 3184, and paragraph 5, section 38, act of August 5, 1909) for the collection of a 5 per cent penalty and interest, as to all assessed taxes not paid within ten days after notice and demand, collectors will, where such notice and demand (Form 17) is to be forwarded by mail, enter therein, as the date on which such assessed tax becomes due and payable, a date ten days subsequent to that of actual mailing, and not as reckoned from the date of the notice as now required in the footnote on said Form.

Where a notice so sent is not delivered in due time, by reason of delay in the mail, and satisfactory evidence of that fact is furnished, the penalty and interest in such cases will not be collected, provided the full tax is paid to the collector within ten days of the actual receipt of the notice. In such cases the envelope enclosing the notice and bearing the postmark of the receiving office should be forwarded to the collector and by him transmitted to this office, with his Form 325, as evidence of delay in the delivery of the notice so sent.

So much of the instruction contained in the first paragraph on page 111 of Regulations No. 1 as is inconsistent herewith is hereby revoked.

ROYAL E. CABELL,
Commissioner.

Approved:

CHARLES D. HILLIS,
Assistant Secretary of the Treasury.

APPENDIX W.

(T. D. 1664.)

BLANK FORMS FOR RETURNS TO BE FURNISHED BY COLLECTORS ONLY TO CORPORATIONS MAKING RETURNS.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 17, 1910.

SIR: — Your letter of the 15th instant has been received, in which you call attention to the constant demand from lawyers, accountants, etc., for anywhere from 25 to 150 blank forms for the returns of corporations for the special excise tax on corporations, and inquire if the same shall be furnished such applicants.

In reply, you are informed that the supply of new forms furnished you was intended to supply only the corporations making return for the special excise tax on corporations in your district, and all persons not connected with or actually representing such corporations should be instructed to make their requests for these blank forms direct to this office, where proper action on each such request will be taken.

Respectfully,
ROYAL E. CABELL,
Commissioner.

MR. CHARLES W. ANDERSON,
Collector, Second District, New York.

APPENDIX X.

(T. D. 1665.)

INSPECTION OF RETURNS OF CORPORATIONS — EXECUTIVE ORDER, ETC.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1910.

To internal revenue officers and others concerned.

The following executive order, together with regulations signed by the Secretary and approved by the President, relative to the publicity feature of section 38 of the act of August 5, 1909, and amendments thereto, imposing a special excise tax on corporations, etc., is hereby published for your information.

ROYAL E. CABELL,
Commissioner.

Executive Order.

Pursuant to the provisions of an act entitled "An Act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and eleven, and for other purposes," providing among other things an appropriation for classifying, indexing, exhibiting and properly caring for the returns of all corporations required by section thirty-eight of an act entitled, "An Act to provide revenue, equalize duties, encourage the industries of the United States and for other purposes," approved August 5, 1909, and further enacting that any and all such returns shall be open to inspection only upon the order of the President under rules and regulations to be prescribed by the Secretary of the Treasury, and approved by the President (36 I Stat. 494).

It is hereby ordered, that all such returns shall be subject to inspection upon compliance with rules and regulations prescribed by the Secretary of the Treasury, and approved by the President, bearing even date herewith.

WM. H. TAFT.

THE WHITE HOUSE,
November 25, 1910.

REGULATIONS GOVERNING THE INSPECTION OF RETURNS OF CORPORATIONS MADE IN ACCORDANCE WITH SECTION 38 OF THE TARIFF ACT OF AUGUST 5, 1909.

TREASURY DEPARTMENT,
Washington, D. C., November 25, 1910.

Inspection of Returns.

By section 38 of the tariff act of August 5, 1909, Congress imposed a special excise tax upon all corporations, joint stock companies, and associations, and insurance companies, foreign and domestic, with certain exceptions, engaged in business in the United States, with respect to carrying on or doing such business, and prescribed the method of handling the return of each corporation as follows:

6. When the assessment shall be made, as provided in this section, the returns, together with any correction thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

In the act making appropriations for the legislative, executive and judicial departments of the Government for the fiscal year ending June 30, 1911, there appears this language:

"For classifying, indexing, exhibiting and properly caring for the returns of all corporations, required by section thirty-eight of an act entitled "An Act to provide revenue, equalize duties, encourage the industries of the United States and for other purposes," approved August fifth, nineteen hundred and nine, including the employment, in the District of Columbia, of such clerical and other personal services and for rent of such quarters as may be necessary, twenty-five thousand dollars; Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President.

For the purpose of making effective the legislative intent thus expressed, the President has ordered that all such returns shall be open to inspection under the following rules and regulations:

1. The return of every corporation shall be open to the inspection of the proper officers and employees of the Treasury Department. Where access to any return is desired by an officer or employee of any other department of the Government, an application for permission to inspect such return, setting out the reasons therefor, shall be made in writing, signed by the head of the executive department or other Government establishment in which such officer or employee is employed, and transmitted to the Secretary of the Treasury. If, however, the return is desired to be used in any legal proceedings, or to be used in any manner by which any information contained in the return could be made public, or access to any return is desired by any official of any State or Territory of the United States, the application for permission to inspect such return shall be referred to the Attorney-General and if recommended by him transmitted to the Secretary of the Treasury.

2. The Secretary of the Treasury, at his discretion, upon application to him made, setting forth what constitutes a proper showing of cause, may permit inspection of the return of any corporation by any bona fide stockholder in such corporation. The person desiring to inspect such return shall make application in writing, to the Secretary of the Treasury, setting forth the reasons why he should be permitted to make such inspection, and shall attach to his application a certificate signed by the president, or other principal officer, of such corporation, countersigned by the secretary, under the corporate seal of the company, that he is a bona fide stockholder in said company. (Where this certificate can not be secured, other evidence will be considered by the Secretary of the Treasury to determine the fact whether or not the appliant is a bona fide stockholder and therefore entitled to inspect the return made by such company.) The privilege of inspecting the return of any corporation is personal to the stockholders, and the permission granted by the Secretary to a stockholder to make such inspection can not be delegated to any other person.

3. The returns of the following corporations shall be open to the inspection of any person upon written application to the Secretary of the Treasury, which application shall set forth briefly and succinctly all facts necessary to enable the Secretary to act upon the request:

(a) The returns of all companies whose stock is listed upon any duly organized and recognized stock exchange within the United States, for the purpose of having its shares dealt in by the public generally.

(b) All corporations whose stock is advertised in the press or offered to the public by the corporation itself for sale. In case of doubts as to whether any company falls within the classification above, the person desiring to see such return should make application, supported by advertisements, prospectus, or such other evidence as he may deem proper to establish the fact that the stock of such corporation is offered for general public sale.

Returns can be seen only in the office of the Commissioner of Internal Revenue, in Washington, D. C. In no case shall any collector, or any other internal revenue officer outside of the Treasury Department in Washington, permit to be seen any return or furnish any information whatsoever relative to any return or any information secured by him in his official capacity relating to such return.

No provision is made in the law for furnishing a copy of any return to any person, and no copy of any return will be furnished except to the corporation making the return, or its duly constituted attorney.

The provisions herein contained shall be effective on and after the 25th day of November, 1910.

FRANKLIN MACVEAGH,
Secretary of the Treasury.

Approved:

WM. H. TAFT,
The White House, November 25, 1910.

APPENDIX Y.

(T. D. 1675.)

SPECIAL EXCISE TAX.

(Synopsis of decisions relating to special excise tax on corporations, etc., imposed by section 38, act of August 5, 1909.—T. D. 1606 of March 29, 1910, revised.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 14, 1911.

The following synopsis of decisions made, from time to time, on questions relating to the special excise tax imposed by section 38, act of August 5, 1909, on corporations, joint stock companies, associations, and insurance companies, is published for the information of internal revenue officers and others concerned.

ROYAL E. CABELL,
Commissioner.

CLASS OF CORPORATIONS, ETC., SUBJECT TO TAX.

1. The tax imposed by the act applies to all corporations, etc., described, except those specifically exempted, without reference to the kind of business carried on.

2. Every corporation, etc., not specifically enumerated as exempt shall make the return required by law, although its net income during the year may not have exceeded $5,000.

3. Corporations claiming special exemption should nevertheless make return (in blank, if desired) accompanied by a statement setting forth the ground on which exemption is claimed.

4. Charitable institutions supported by voluntary contributions or State appropriations are held to be exempt from the payment of the special excise tax on corporations, but should file a return in blank as provided in paragraph 3 hereof.

5. Corporations, etc., organized during the year or going into liquidation during the year should nevertheless render a sworn return on the prescribed form. The tax imposed, however, is held not to apply to corporations which went out of existence prior to the passage of the act.

6. Where company has dissolved and the required return is not made by its officers, such return will be prepared by commissioner.

7. Where corporation has gone into bankruptcy, returns in such cases to be made by trustee in bankruptcy.

8. Railroad companies operating leased or purchased lines to include all receipts derived therefrom, and if bonded indebtedness has been assumed may deduct interest thereon to an amount not exceeding its own paid-up capital stock. If such subsidiary companies receive income in the way of rentals, etc., return to be also made by such companies.

9. Corporations, etc., organized under the authority of the United States or any State or Territory thereof, or Alaska or the District of Columbia, to in-

clude in their returns not only the income derived from the business carried on within the confines of the United States, but income received from business transacted in any foreign country as well.

10. Corporations having branch or subsidiary companies to include in their returns the income of all such companies when no distinction is made in operating and accounting by reason of the separate incorporation of such subsidiary companies; otherwise, a return by each corporation should be made.

11. Foreign companies having several branch offices in the United States should each designate one of such branches as its principal office and should also designate the proper officers to make the required return.

12. Where a consolidation of two or more corporations has been effected during the year, and each or any such corporation subsequent to such consolidation collects prior existing debts, each such corporation should make separate return and include therein all such collected debts, as also all income received during the year prior to the date of consolidation.

13. "Principal place of business" is held to mean the principal office where the company keeps its books from which the required return is to be prepared and not the place where the operating plant is located.

14. As the law specifically provides that the tax imposed shall be computed on the net income during each calendar year, returns of income based on any period other than the calendar year cannot be accepted.

15. Full amount of stock, as represented by the par value of the shares issued, to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation.

16. Capital stock held to include both preferred and common stock.

17. Surplus and undivided profits not to be included in capital stock.

18. Holding companies known as "voting trusts," receiving only dividends on stock held, and having no capital stock, etc., not liable.

19. Mutual savings banks having no capital stock not liable to tax imposed. (Opin. Atty.-Gen. Feb. 14, 1910.)

20. Co-operative dairies not issuing stock and allowing patrons dividends based on butter fat in milk furnished not liable.

21. Foreign steamship companies having no office in the United States, whose vessels only occasionally touch at ports in the United States, not regarded as doing business in this country within the meaning of the statute.

22. Companies organized in Porto Rico and not engaged in business in the United States not subject to tax.

23. Corporations owning sugar or other plantations and disposing of the products thereof not entitled to exemption as agricultural organizations.

24. Corporations organized to sell provisions, etc., to stockholders and others not exempted.

25. Corporations organized for the purpose of holding real estate to make return of income derived from the property so held.

26. National banks do not come within any of the exemptions named in the act.

27. "Agricultural organizations" held not to come within the statutory exemption, unless their chief object is the promotion or advancement of agri-

cultural interest, and no part of the net income inures to the benefit of their stockholders.

28. Mutual Hail Association regarded as an insurance company and not as an agrocultural association, and therefore liable to tax.

29. Exemption in favor of fraternal beneficiary associations does not apply to mutual fire insurance companies.

30. Limited partnership, if organized for profit and having a capital stock represented by shares, although no "certificates of stock" are issued, are liable to the tax imposed. (Opin. Atty.-Gen. Feb. 14, 1910.)

31. Interest received on government bonds to be included in gross income. (Opin. Atty.-Gen. Jan. 13, 1910.)

32. Returns should be signed and verified by two of the officers designated in the law. Signing of one person holding two such offices not permitted. Agents for foreign steamship companies may sign the required returns, if so authorized by their companies.

33. Returns not required to have corporate seal affixed.

34. Returns filed with deputy collector regarded as having been filed with collector.

35. No form of protest prescribed. Any form of protest sufficient if filed before payment of tax. Right of protest not to be denied.

Inventories, Accounts, etc.

36. Where an inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental statement shall be verified under oath by the treasurer or principal financial officer submitting the same. (T. D. 1578.)

37. Profits realized on sale of real estate during the year, also increase in value of unsold property, if taken up on the books of the corporation, to be included in income.

38. Cost of manufactured articles, or articles in process of manufacture, held to include original cost of materials used, plus cost of labor, etc.

39. Mortgaged real estate should be inventoried at its full value and amount of mortgage reported as indebtedness.

40 Receipts from sale of patent rights to be included in income.

41. No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations, etc., must be so recorded that each and every item therein set forth may be readily verified by an examination of the books and accounts where such examination is deemed necessary.

Deductions, Expenses, etc.

42. It is immaterial whether the deductions are evidenced by actual disbursements in cash or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books as to constitute a liability against the assets of the corporation, etc., making the return.

43. Mortgage indebtedness on real estate, if assumed by the corporation acquiring such real estate, to be included in the indebtedness of the corporation. But if not so assumed and remains only as a lien on the property, interest paid thereon may be deducted as a charge "made as a condition to

the continued use or possession of the property." (Opin. Atty.-Gen. Feb. 21, 1910.)

44. Cost of erecting building, if included in lease under which property is held by company, is a proper deduction, to be prorated according to time fixed by lease.

45. General expenses, such as coal, ship stores, etc., of foreign steamship companies, to be prorated as provided in act for interest deductions.

46. Amount received by nursery companies from sales of trees, etc., less amount expended for seedlings and young trees, to be included in gross income. Amount expended for labor, salesmen, etc., to be deducted as expenses.

47. Commissions allowed salesmen, paid in stock, may be deducted as expense if so charged on books.

48. Sales of stock and bonds are regarded as sales of capital assets and should be so accounted for. (Art. 2, regs. 31.) But proceeds derived from sale of bonds used in defraying ordinary and necessary expenses are a proper deduction in determining the company's net income.

49. Stock issued in payment of property purchased represents capital investments, and notes issued during the year represent indebtedness. Corporate funds applied to the payment of outstanding notes not a proper deduction in ascertaining net income.

50. Amounts expended in additions and betterments which constitute an increase in capital investment not a proper deduction.

51. Dividends received by corporations on stock of other corporations whose net income does not exceed $5,000 is nevertheless a proper deduction under the law. (Opin. Atty.-Gen. Jan. 24, 1910.)

52. Dividends received on stock of foreign corporations not subject to tax not a proper deduction.

53. Dividends paid employees in lieu of wages not proper deduction as expenses.

54. Royalties on patent rights to be reported as income. Allowance for depreciation of patents expiring during year, however, will be allowed.

55. Lands bought previous to January 1, 1909, and sold during the year 1910, should have the profits arising from such sale prorated in accordance with the number of years the land was held by the corporation and the number of years the law was in effect, if no accounting of increased value of land was made in returns for previous years.

56. Banks paying taxes assessed against their stockholders because of their ownerhip of the shares of stock issued by such bank cannot deduct the amount of tax so paid in making their return for the special excise tax on corporations.

57. Amounts paid for pensions to retired employees, or to their families or others dependent upon them, or on account of injuries received by employees, are proper deductions as "ordinary and necessary expenses;" gifts or gratuities to employees in the service of a corporation are not properly deductible in ascertaining net income. Donations made for purposes connected with the operation of the property when limited to charitable institutions, hospitals, or educational institutions, conducted for the benefit of its employees, or their dependents, shall be proper as a deduction under the same head.

58. Where allowances on account of salaries are deemed excessive and for the purpose of evading the tax due, investigation will be made, and if the facts warrant prosecution will follow.

59. Interest paid on time deposits and deposits subject to check constitutes a proper deduction from the amount of gross income during the year.

60. Interest on portions of bonded or other indebtedness bearing different rates of interest may be deducted from gross income during the year, provided the aggregate amount of such indebtedness does not exceed the paid-up capital stock of th corporation.

61. Interest paid during the year on notes given prior to January 1, 1909, to be prorated. But interest on notes given in 1909, and payable subsequent to December, 1909, unless charged on the company's books, is not a proper deduction from the income of that year.

62. Interest, taxes, or other items allowable as deductions, accruing prior to January 1, 1909, are not allowable deductions from the gross income of years subsequent thereto.

63. Unearned premiums set aside by insurance companies as reserve not to be included as income until earned.

64. Funds set aside by company for insuring their own property not a proper deduction.

65. As the tax imposed is measured by and is not a tax upon the net receipts of corporations, etc., interest received during the year on government bonds is not a proper deduction from such income in determining the amount of tax due. (Opin. Atty.-Gen. T. D. 1583.)

66. State, county or municipal taxes paid during the year a proper deduction in ascertaining the net income of corporations.

67. Import duties or taxes if included in arriving at cost of goods are not deductible under the head of taxes paid during the year.

68. Bad debts, if so charged off the company's books during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income.

Depreciation.

69. Where increase or decrease during the year in the value of real estate acquired in previous years, sold or held for sale, is taken up on the books and the rate cannot be accurately determined with respect to individual years, such increase or decrease may be prorated as provided by regulations in cases of sale of capital assets.

70. Premiums on stocks and bonds arbitrarily charged off on the books of a corporation do not constitute a proper deduction on account of depreciation, unless there shall have been an actual shrinkage in value of such stocks and bonds to the extent of the deduction claimed during the year for which the return is made.

71. Net income on uncompleted contracts may be estimated on the basis of the percentage of the work completed as compared with the contract price of the whole work.

72. Cost of drilling new wells by oil corporations is considered betterments and additions to the capital assets of the corporation. The expense of drilling dry wells may, however, be charged to profit and loss.

73. "Good will" represents the value of a business over and above the value of the property, and is chargeable only to capital investment account and is not an allowable deduction from the income of a corporation.

74. Discounts, other than bank discounts on notes executed by a corpora

tion, should be segregated from the interest item on the return, and should be included under expenses, item 4.

75. The mere removal of timber by cutting from timber lands, unless the timber is otherwise disposed of through sales or plant operations, is considered simply a change in form of assets. If said timber is disposed of through sales or otherwise it is to be accounted for in accordance with regulations governing disposition of capital and other assets.

76. Deduction on account of depreciation of property must be based on lifetime of property, its cost, value, and use.

77. Loss due to voluntary removal of buildings, etc., incident to improvements is either a proper charge to the cost of the new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation.

78. Depreciation of company's stock a loss to the stockholders, but not a loss to the company issuing the same, and therefore not a proper deduction.

Publicity.

79. A person who as trustee or in any other fiduciary relation has the ownership or possessory right to stock in a corporation is a stockholder in such corporation within the equity of the rule set down in Treasury Decision No. 1665, governing the publicity of returns. (Opin. Atty.-Gen. Dec. 27, 1910.)

Depreciation in Minerals, Oils, etc.

80. In case of corporations whose business consists in part or wholly of mining, producing, and disposing of deposits of nature (ores, coals, gas, petroleum, and sundry minerals) the conduct of such business will be understood to comprehend two classes of gains or losses, viz.:

(*a*) The gain or loss resulting from the sale of capital assets, i. e., either the increment, or the loss, arising through possessing over a period of time the investment in the same.

(*b*) The trading or commercial gain attached to the conduct of the industry, the employment of working capital, the effort and risk involved.

81. In the ascertainment of net income deduction will be allowed for depreciation arising from exhaustion of deposits of ore, mineral, etc., and for depreciation and obsolescence of improvements, in accordance with general regulations respecting depreciation allowances, on the basis of the original capital investment cost of the properties concerned to the company reporting.

82. A further deduction will also be allowed, through not including the same at all in the item of gross income (item 3, Form 637), for the unearned increment represented in such properties as at January 1, 1909, which will be determined in general as follows:

83. An estimate should be made as of January 1, 1909, of the fair market value at that date of the minerals, etc., in deposit. This estimate should be formed on the basis of the disposal value of the minerals *in total* and exclusive of value of improvements and development work. This valuation should also be reduced to a unit value — per ton, barrel, etc.

NOTE. — Values as aforesaid should not be estimated on the basis of the assumed salable value of the output under current operative conditions, less

the actual cost of production, because, as hereinbefore stated, the selling price under such conditions comprehends a profit both for carrying the investment in minerals, improvements, and working capital, and for conducting operations in respect of production and disposal of product. The value to be determined as stated must be on the basis of the salable value of the entire deposit of the aggregate units of minerals considered *en bloc* if disposed of in that form. Nor must such valuation comprehend any speculative value which might attach to a sale of the minerals *en bloc*, i. e., a value which might be obtained on the ground that the future would develope a much greater reserve of mineral deposits than were believed to exist at the time estimate as of January 1, 1909, was formed. Any value of this latter character would attach obviously to such additional reserves when developed in future.

84. The unit value as of January 1, 1909, ascertained as above outlined, would indicate the value to be attached at that date to the capital assets disposed of during any calendar year succeeding, and should be used in determining the unearned increment at January 1, 1909, which may be excluded entirely from the item of gross income, as before explained, in following manner, viz:

Value at January 1, 1909, determined in manner outlined, of minerals, etc., which may be removed and disposed of in any year subsequent thereto. . . . . $——

Less the following:

(*a*) Proportion of depreciation charge applying to exhaustion of minerals disposed of, ascertained as first explained herein on basis of original cost..... $——

(*b*) Royalty paid, if any, on minerals disposed of..... —— ——

Balance, being unearned increment at January 1, 1909, to be excluded from gross income item..... ——

85. The precise detailed manner in which the estimate of value of minerals, etc., as at January 1, 1909, shall be formed, must naturally be determined upon by each corporation interested, but formal record of such estimates, together with all sustaining information, should be carefully filed so as to be readily accessible for reference. Values as stated, as determined at January 1, 1909, should be used in compilation in all subsequent years' excise-tax returns. The question as to whether it subsequently develops the property possessed a greater quantity of mineral, etc., reserve than was in the aggregate estimated as of January 1, 1909, is immaterial. Any excess which may be developed will be considered as possessing the same value at January 1, 1909, as that which then may have been known to be in the property.

86. Each excise-tax return (Form 637) should be accompanied with memorandum setting forth the extent in amount of the exclusion made from the item gross income for unearned increment realized during the year, as above outlined.

87. As the amount to be deducted for depreciation (paragraph 2 preceding) is to be formed on basis of the estimated reserve of minerals, etc., it follows that if it develops such estimate is understated, the cost investment in the capital asset may be wholly extinguished before all mineral reserves are removed. When this is reached, further deductions for exhaustion of minerals should be discontinued, but in such event, it will be noted, the allowance for

unearned increment which is to be excluded entirely from gross income will be correspondingly increased.

88. In case of corporations leasing mines and paying royalties on minerals, etc., removed, the royalties paid are to be treated as expenses and deducted in ascertaining net income, as provided in general regulations. Any leasehold investment which the operating corporation may have in such properties, either through a payment originally made for acquirement thereof or for improvements made upon the property, to be accounted for in accordance with regulations governing depreciation allowances and disposition of capital assets.

89. In respect to properties of the character in question which may be acquired by a corporation after January 1, 1909, a deduction will be allowed only as to depreciation arising from exhaustion based on original cost; no exclusion from gross income can be made for unearned increment, as profit arising in sale of such capital assets applies wholly to the period subsequent to January 1, 1909.

APPENDIX Z.

(T. D. 1685.)

This circular contains a copy of the United States Supreme Court decision in Flint *v.* Stone Tracy Co. et al., decided March 13th, 1911, and is given in full, ante, pages 22–42.

APPENDIX AA.

(T. D. 1686.)

SPECIAL EXCISE TAX ON CORPORATIONS — OPINION OF THE UNITED STATES SUPREME COURT.

It was the intention of Congress to embrace within the statute, imposing a special excise tax on corporations, only such corporations and joint stock associations as are organized under some statute, or derive from that source some quality or benefit not existing at the common law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 20, 1911.

The appended decision of the Supreme Court of the United States in the cases of Amory Eliot, appellant, *v.* James G. Freeman et al., and Maine Baptist Missionary Convention, appellant, *v.* Charles E. Cotting et al., is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL,
Commissioner.

SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1910. Nos. 448 AND 496.

Amory Eliot, appellant, v. James G. Freeman, Robert A. Boit, Nathaniel Thayer, and Robert H. Gardner, and *Maine Baptist Missionary Convention, appellant, v. Charles E. Cotting and Charles F. Adams, 2d, Trustees, etc.*

APPEALS from the Circuit Court of the United States for the district of Massachusetts.

[March 13, 1911.]

Mr. Justice DAY delivered the opinion of the court:

These cases present facts differing from those involved in the consideration of the corporation tax cases just decided. Flint *v.* Stone Tracy Co., ante.

In No. 448 the question is raised as to the right to lay a tax under this statute upon a certain trust formed for the purpose of purchasing, improving, holding, and selling lands and buildings in Boston, known as "the Cushing real estate trust." By the terms of the trust the property was conveyed to certain trustees, who executed a trust agreement whereby the management of the property was vested in the trustees, who had absolute control and authority over the same, with right to sell for cash or credit, at public or private sale, and with full power to manage the property as they deemed best for the interest of the shareholders. The shareholders are to be paid dividends from time to time from the net income or net proceeds of the property, and 20 years after the termination of lives in being the property to be sold and the proceeds of the sale to be divided among the parties interested. The trustees

were to issue 4,800 shares to the owners of the property at $100 each, the owners to receive a number of shares equal to the value of the interest conveyed to the trustees. The shares were transferable on the books of the trustees, and on surrender of the certificate and the transfer thereof in writing a new certificate is to issue to the transferee. No shareholder had any legal title or interest in the property and no right to call for the partition thereof during the continuance of the trust. The legal representatives of a shareholder are to succeed to the interest of a shareholder, the interest passing by operation of law. Provision is made for the termination of the trust by an instrument or instruments in writing, signed by not less than three-fourths of the value of stock held by shareholders. Meetings of the shareholders are held at their discretion, or whenever requested in writing by five shareholders, or by shareholders owning not less than one-tenth of the shares in value.

The trust has a building, leasing it to a single tenant. It also maintains and operates an office building with elevator service, janitor service, etc.

Case No. 496 involves what is known as a "department store trust." It was created by deed and formed for the purpose of purchasing and holding certain parcels of land in the city of Boston, and erecting a building thereon suitable for a department store. The land and buildings are leased to one tenant for a period of 30 years. The trust had transferable certificates issued to shareholders at the par value of $100 each. The trustees conduct the affairs of the trust, manage the property, and pay dividends when declared. The shareholders meet annually, and a majority of them have the power to elect and depose trustees and to alter and amend the terms of the trust agreement. This trust also continues for certain lives in being and for 20 years thereafter. Each of the trusts involved in these cases is in receipt of a net income exceeding $5,000.

Under the terms of the corporatior tax act, corporations and joint stock associations must be such as are "now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia."

The pertinent question in this connection is: Are these trusts organized under the laws of the State? As we have construed the corporation tax act in the previous cases, Flint *v.* Stone Tracey Co., ante, the tax is imposed upon doing business in a corporation or quasi corporate capacity; that is, with the facility or advantage of corporate organization.

It was the purpose of the act to treat corporations and joint stock companies, similarly organized, in the same way, and assess them upon the facility in doing business which is substantially the same in both forms of organization. Joint stock organizations are not infrequently organized under the statute laws of a State, deriving therefrom, in a large measure, the characteristics of a corporation.

The language of the act "* * * now or hereafter organized under the laws of the United States," etc., imports an organization deriving power from statutory enactment. The statute does not say under the law of the United States, or a State, or lawful in the United States or in any State, but is made applicable to such as are organized under the laws of the United States, etc. The description of the corporation or joint-stock association as one organized under the laws of a State at once suggests that they are such as are the

creation of statutory law, from which they derive their powers and are qualified to carry on their operations.

A trust of the character of those here involved can hardly be said to be organized, within the ordinary meaning of that term; it certainly is not organized under statutory laws as corporations are. The difference between joint-stock associations at common law and those organized under statutes are well recognized (Cook on Corporations, sec. 505):

There is an essential difference between a joint-stock company as it exists at common law and a joint-stock company having extensive statutory powers conferred upon it by the State within which it is organized. The latter kind of joint-stock company is found in England and in the State of New York. To such an extent have these statutory powers been conferred on joint-stock companies that the only substantial difference between them and corporations is that the members are not exempt from liability as partners for the debts of the company.

The two cases now under consideration embrace trusts which do not derive any benefit from and are not organized under the statutory laws of Massachusetts. Joint-stock companies of the statutory character are not known to the laws of that Commonwealth. Ricker *v.* American Tea Co. (140 Mass. 346.) These trusts do not have perpetual succession, but end with lives in being and 20 years thereafter.

Entertaining the view that it was the intention of Congress to embrace within the corporation tax statute only such corporations and joint stock associations as are organized under some statute or derive from that source some quality or benefit not existing at the common law, we are of opinion that the real estate trusts involved in these two cases are not within the terms of the act. In that view the decrees in both cases will be reversed and the same remanded to the Circuit Court of the United States for the district of Massachusetts with directions to overrule the demurrers and for further proceedings consistent with this opinion.

Reversed.

APPENDIX BB.

(T. D. 1687.)

SPECIAL EXCISE TAX ON CORPORATIONS — OPINION OF THE UNITED STATES SUPREME COURT.

Where a corporation originally organized for the purpose of owning and renting an office building, leased the property for 130 years and reorganized and practically went out of business, its sole authority being to hold the title subject to the lease, and to receive and distribute the rentals accruing thereunder, or the proceeds of sale, if the property should be sold, held not liable to the special excise tax under section 38 of the act of August 5, 1909.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 20, 1911.

The appended decision of the Supreme Court of the United States in the case of Ary E. Zonne, appellant, *v.* Minneapolis Syndicate et al., is published for the information of internal-revenue officers and others concerned.

ROYAL E. CABELL,
Commissioner.

SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1910. No. 627.

Ary E. Zonne, appellant, v. Minneapolis Syndicate, John De Laittre, Treasurer, and J. Frank Conklin, Assistant Treasurer.

APPEAL from the Circuit Court of the United States for the district of Minnesota.

[March 13, 1911.]

Mr. Justice DAY delivered the opinion of the court:

This case involves the validity of the corporation tax act just passed upon in No. 407, Flint *v.* Stone Tracy Co., ante.

The case presents a peculiarity of corporate organization and purpose not involved in the case just decided. The Minneapolis syndicate, as the allegations of the bill, admitted by the demurrer, show, was originally organized for and engaged in the business of letting stores and offices in a building owned by it, and collecting and receiving rents therefor. On the 27th of December, 1906, the corporation demised and let all of tracts, lots, and parcels of land belonging to it, being the westerly half of block 87 in the city of Minneapolis, to Richard M. Bradley, Arthur Lyman, and Russell Tyson as trustees for the term of 130 years from January 1, 1907, at an annual rental of $61,000, to be paid by said lessees to said corporation. At that time the corporation caused its articles of incorporation, which had theretofore been those of a corporation organized for profit, to be so amended as to read:

The sole purpose of the corporation shall be to hold the title to the westerly one-half of block 87 of the town of Minneapolis, now vested in the corporation subject to a lease thereof for a term of 130 years from January 1, 1907, and,

for the convenience of its stockholders, to receive, and to distribute among them, from time to time, the rentals that accrue under said lease, and the proceeds of any disposition of said land.

As we have construed the corporation-tax law (Flint *v.* Stone Tracy Co., ante), it provides for an excise upon the carrying on or doing of business in a corporate capacity. We have held in the preceding cases that corporations organized for profit under the laws of the State, authorized to manage and rent real estate, and being so engaged, are doing business within the meaning of the law, and are therefore liable to the tax imposed.

The corporation involved in the present case, as originally organized and owning and renting an office building, was doing business within the meaning of the statute as we have construed it. Upon the record now presented we are of opinion that the Minneapolis syndicate, after the demise of the property and reorganization of the corporation, was not engaged in doing business within the meaning of the act. It had wholly parted with control and management of the property; its sole authority was to hold the title subject to the lease for 130 years to receive and distribute the rentals which might accrue under the terms of the lease, or the proceeds of any sale of the land if it should be sold. The corporation had practically gone out of business in connection with the property and had disqualified itself by the terms of reorganization from any activity in respect to it. We are of opinion that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909. Holding this view, we think the court below erred in sustaining the demurrer to the bill. The decree of the court below is therefore reversed and the cause remanded to the Circuit Court of the United States for the district of Minnesota with direction to overrule the demurrer and for further proceedings consistent with this opinion.

Reversed.

APPENDIX CC.

OPINIONS OF ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
January 13, 1910.

SIR: I have the honor to acknowledge receipt of your communication of December 23, 1909, in which you request my opinion as to whether or not under section 38 of the act of August 5, 1909 (36 Stat. 112) corporations subject to the tax provided for therein should include in the returns required to be made as a part of their gross income, the interest on United States bonds held by them, and in reply thereto will say:

By section 38 of said act it is provided: First, that the corporations specified therein "shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation — equivalent to 1 per centum upon the entire net income over and above five thousand dollars received by it *from all sources* during such year, exclusive of amounts received by it as dividends upon stock of other corporations," etc.; second, that the net income of a corporation shall be ascertained by deducting from the gross amount of the income (first) the expenses described; (second) losses described; (third) interest paid on its indebtedness, not exceeding the paid-up capital, and in case of banking and trust companies interest paid on deposits; (fourth) all sums paid within the year as dividends upon the stock of other corporations subject to the tax imposed; and (fifth), that there shall be deducted from the net income of such corporation, ascertained as provided, the sum of five thousand dollars, and the tax shall be computed upon the remainder of said net income.

The tax here imposed is not a tax upon the property of the corporation, but is specifically designated as "a special excise tax with respect to the carrying on or doing business by such corporation." That is, it is in the nature of a tax imposed upon the privilege of carrying on the business; and the net income, ascertained as described, was adopted by Congress only as a basis for computing what the amount of the assessment should be.

In the passage of this act, Congress doubtless had in mind the decision of the Supreme Court in the case of Pollock *v.* Farmers Loan & Trust Company (157 U. S. 429), known as the income-tax case; and it was no doubt its intention to avoid every character of taxation that might be regarded as a direct tax; and, consequently, it carefully avoided imposing a tax upon the property of the corporation or upon its income, and fixed and designated it as a tax upon the carrying on or doing of its business.

Furthermore the act is specific in its terms and enters into minute details with reference to how the net income of the corporation, for the purpose of fixing the amount of the tax, shall be computed; and this particularity necessarily excludes the intention that any other provision can, by implication be read into the act.

I am therefore of the opinion that in computing the amount of the gross income, corporations owning United States bonds should include the interest received thereon, and that such interest should not be deducted from the gross income for the purpose of ascertaining the net income which serves as a basis for computing the amount of taxes to be paid.

Respectfully,

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.

APPENDIX DD.

DEPARTMENT OF JUSTICE,
January 24, 1910.

SIR: — In reply to your communication of January 15, 1910, in which you ask my opinion whether under section 38 of the act of August 5, 1909 (36 Stat. 112) known as the "Corporation Tax Law," in computing its net income, a corporation may deduct from its gross income dividends received by it from another corporation of a class to which the act is applicable, but which does not have a net income to exceed $5,000, I have the honor to say:

Those parts of the act which bear upon this question are as follows:

"That every corporation * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: * * * *Provided, however*, that nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders or associations operating under the lodge system, and providing for the payment of life, sick, accident and other benefits to the members of such societies, orders or associations, and dependents of such members, nor to domestic building and loan associations organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

"Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation * * * "fifth all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies, or associations, or insurance companies, subject to the tax hereby imposed. * * *

"Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter." * * *

The question is whether or not a corporation whose net income does not exceed $5,000, and which, therefore, pays no tax under this statute, is a corporation "subject to the tax" thereby imposed within the meaning of the act.

When the language of the act is considered, together with the clear intent of those who drafted its provisions, I think there can be no doubt about the

answer that should be given to this inquiry. The act expressly declares that every corporation of the kinds mentioned "shall be subject to pay annually a special excise tax," and then provides a method for the computation of the amount to be paid. Therefore, every one of such corporations falls within the provisions of the act, and must make out a report of its business, as therein required, and in every respect comply with its terms. It may turn out when the calculation is made on the basis specified that no tax will be assessed against it, not because the corporation is not subject to the tax, but because its earning capacity is not sufficient to necessitate its imposition for that year, just as every male person within certain ages may be subject to draft during the time of war, yet the conditions necessitating the draft may never arise.

This manifest meaning of the language is clearly in accord with the legislative intent. The purpose was to exclude $5,000 of a corporation's earnings from consideration in estimating the amount of taxes which it should pay, and, further, that such $5,000 should remain exempt from such estimate, though it should pass by way of a dividend into the hands of other corporations, just as it was the intention that when any part of a corporation's earnings had once entered into an estimate, as a result of which taxes were imposed, such sum should not again be considered in determining the amount to be paid by another corporation.

The effect of the contrary construction shows that such must have been the purpose of this provision. For, suppose a corporation holds 50 per cent of the capital stock of two corporations, one of which has a net income of $5,500, which it disburses as dividends. According to the theory that the first of these dividend paying corporations is not subject to this tax, while the second one is, the corporation holding their stock cannot deduct any part of the dividends received from the first corporation in estimating its net income, but can deduct of that received from the second one not only the $250, the 50 per cent of the excess over the $5,000 which was deducted from the gross income of such corporation, but also the $2,500, the 50 per cent of the $5,000 deducted. That is, according to this theory, the $5,000 which must be deducted from a corporation's gross income can not be deducted in the hands of other corporations which have received it as dividends when the first corporation has a net income of $5,000 or less, but it can be deducted if such corporation has a net income of over $5,000.

No such result was intended by Congress, and I am clearly of the opinion that the dividends received by a corporation as a stockholder of any other corporation of a character to which the act applies should be deducted from its gross income, regardless of the amount of the net income of such dividend-paying corporation.

Respectfully

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.

APPENDIX EE.

DEPARTMENT OF JUSTICE,
February 14, 1910.

SIR: — I have the honor to acknowledge receipt of your communications of January 22 and February 4, 1910, in which you ask my opinion with reference to whether or not certain business concerns fall within the provisions of section 38 of the act of August 5, 1909 (36 Stat. 112) which provides for an excise tax "with respect to the carrying on or doing business" by corporations, joint stock companies and associations," and in my reply I will consider separately the several classes of concerns to which you refer, with the exception of certain realty associations to be dealt with in a separate opinion.

1. Partnership associations, organized under the laws of the State of Pennsylvania.

By reference to the Pennsylvania statutes I find that the material provisions of the law under which such associations are organized are as follows: The association is formed by three or more persons subscribing and contributing capital thereto, which alone shall be liable for the debts of the association, and such persons sign and acknowledge a statement in writing which contains the names of the parties composing the association, the amount of capital subscribed by each, the total amount of capital, and when and how the same is to be paid, the character of the business to be conducted and location of the same, the name of the association with the word "Limited" added as a part thereof, the contemplated duration of the association (which shall not in any case exceed twenty years), and the names of the officers of said association selected in conformity with the provisions of the act; which statement is recorded in the office of the recorder of deeds of the proper county.

The members of the association are not individually liable for the indebtedness thereof except if an execution is issued against the association and no property can be found, the court, after investigation, shall order the issuance of an execution against the members of the association, who shall be liable to the extent of the capital subscribed and remaining unpaid by them. The word "limited" shall constitute the last word of the name of the association. The interest of a member in the association is declared to be personal estate, and it may be transferred, given, bequeathed, distributed, sold and assigned, under such rules and regulations as the association, shall, from time to time, prescribe by a majority vote of its members in number and value of their interest, and, in the absence of rules and regulations, the transferee of an interest is not entitled to participate in the business of the association unless elected to membership by a vote of the majority of the members in number and value of interest. Any change of ownership which occurs in the absence of rules and regulations governing such transfer, and which is not followed by election to membership, entitles the transferee only to the value of the interest so acquired at the time of acquiring the same, at a price and terms to be agreed upon, and, in default of agreement, at a price and terms to be determined by an appraiser to be appointed by the Court of Common Pleas.

One meeting per annum is required of the association, and it is also required that there shall be elected not less than three nor more than five managers, who shall manage the affairs of the association, and it is prohibited from contracting any liability except by one or more of the managers. The association may divide the profits of the business in such manner and amounts as the majority of its managers may determine, which division shall not "diminish or impair the capital stock of the said association." It is prohibited from loaning its credit, name or capital to any member of the association. It may be dissolved by the expiration of the period fixed for its duration, or by a majority vote of its members in number and value of interest, and when dissolved, after paying its liabilities, the remainder of its assets shall be distributed in proportion to the interests of the members. It is authorized to adopt and use a common seal; and contributions to the capital may be made in real or personal property, at a valuation to be approved by all the members. All real estate is held and owned in the name of the association, and it must "sue or be sued" in the association name, and when suit is brought against any such association, service thereof shall be made upon the chairman, secretary and treasurer thereof, which service shall be as complete and effective as if made upon each and every member of such association;" and service of process may also be had upon any agent, chief, or any other clerk or upon any director or manager of such association in any county where the association may maintain or keep an office for the transaction of business.

The excise tax created by section 38 of the act of August 5, 1909, is made to apply to "every corporation, joint stock company or association organized for profit and having a capital stock represented by shares * * * organized under the laws * * * of any State."

I have no doubt that an association organized as above shown falls within the provisions of this act. Its organization is perfected under statutory authority, and while it is denominated a partnership association yet it is given, as a separate entity, every privilege and power that is essential to constitute an incorporate body. In fact some privileges are conferred which might have been omitted and still it would fall within the provisions of the act.

A similar question arose in the case of Liverpool Insurance Company *v.* Massachusetts, 77 U. S. 566. A statute of the State of Massachusetts imposed a tax upon "each fire, marine, and fire and marine insurance company incorporated or associated under the laws of any government or State other than one of the United States." It was insisted that this insurance company was not a corporation or association within the meaning of the statute. It appeared from an analysis of its articles of association as authorized by the Parliament of Great Britain that (1) it had a distinctive and artificial name by which it could make contracts; (2) that it could sue and be sued in the name of one of its officers, and the whole body was bound by the judgment: (3) that it had a provision for perpetual succession by transfer and transmission of its shares of capital stock; and (4) that its existence as an entity, apart from its shareholders, was recognized by the act of Parliament, which enabled it to sue its shareholders and be sued by them. On the other hand, its individual members were liable for the debts of the company, and it could not be sued in its artificial name, and the act of Parliament under which it

was organized, expressly declared that such organization should not "be held to constitute the body of a corporation." The court held that the organization was an artificial body which possessed all the essential elements of a corporation, and that the declaration in the act under which it was organized, that it should not be so considered, could not alter the fact, and therefore held that it was liable to the tax specified in the Massachusetts statute.

An association organized under the Pennsylvania statute has an artificial name in which all of its business is transacted, and by which it can sue and be sued; it has perpetual succession for the length of time specified in the articles of association, and while there is no positive provision which authorizes it to sue and be sued by a member of the association, yet there can be no doubt that any member of the association is at liberty to make a separate contract with it as a person, and that an action thereon could be maintained by either party, and that a right of action of any other kind might arise and be litigated between them. In addition to this, a member of the association is exempt from liability for its indebtedness, except as to the amount of capital subscribed by him.

Such an association clearly falls within the definition of a corporation given by Mr. Justice Field in B. & P. R. R. Co. *v.* Fifth Baptist Church, 108 U. S. 330, to wit:

"Private corporations are but associations of individuals united for some common purpose, and permitted by law to use a common name and to change its members without a dissolution of the association."

And also the definition given by the Supreme Court of New York in People *v.* Assessors of Watertown, 1 Hill, 620, which was quoted with approval by the Supreme Court of Maine in Sibley *v.* Lumber Association, 93 Me. 401:

"A corporation aggregate is a collection of individuals united in one body under such a grant of privileges as secures the succession of members without changing the identity of the body, and constitutes the members for the time being one artificial person, or legal being, capable of transacting some kind of business like a natural person."

And within the definition given by Chief Justice Marshall in the Dartmouth College Case, 4 Wheat. 517, 636, that

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law."

The law creating this tax contains no special requirements as to what powers this artificial person shall possess, the only essentials being that it shall be organized under a law, that its object shall be for profit, and that it shall have a capital stock represented by shares. The capital of these associations is subscribed for in the usual way, and the members own an interest in the capital stock in proportion to the amount subscribed by them.

In 1 Cook on Corporations, section 12, it is said that a share of stock may be defined as —

"A right which its owner has in the management, profits, and ultimate assents of the corporation."

The interests of the members of the associations in question certainly falls within this definition. It is true that the issuance of certificates of shares is not required, but a certificate of stock is but a mere muniment of title, a mere evidence of ownership, and not the share itself.

"It operates to transfer nothing from the corporation to the stockholder,

but merely affords to the latter the evidence of his rights (1 Cook on Corporations, 13)."

I am of the opinion, therefore, that associations organized under this Pennsylvania statute are liable to the tax imposed under section 38 of the act of August 5, 1909.

2. Mutual savings banks organized under an act for the incorporation of savings banks, passed by the legislature of West Virginia February 21, 1887, and amended by the act of February 24, 1899.

Such a bank may be organized by not less than thirteen persons, citizens of the State, whose fitness for the proposed trust is certified to by the judge or judges of the Circuit Court of the county wherein the proposed savings bank is to be located. The form of the charter, and the method of procuring the same is particularly set forth. From the incorporators, and those subsequently added thereto, fifteen are selected by the body, on the approval of the judge or judges of the Circuit Court of the county, who constitute a board of trustees, and who have power to act for the corporation. These trustees elect from their number a president and vice-president, and appoint all necessary officers to transact the business of the bank. The bank, when organized, is authorized to receive any sum of money for deposit and to invest the same as authorized by the act, and the deposits, with dividends accrued thereon, are required to be paid to the depositors under rules and regulations to be adopted by the board of trustees. By section 24 it is provided that the income or profit of any such savings bank, after the deduction of all reasonable expenses incurred in the management thereof and the guaranty fund, shall be divided among its depositors or their legal representatives, at such times as may be fixed by its by-laws. There is no capital subscribed and the business consists in receiving deposits and investing the sum so received in accordance with the provisions of the charter and the by-laws adopted thereunder, and of repaying the depositors; and all the profits, after the payment of the necessary expenses are divided among the depositors.

There is no question that such a concern is a corporation; but it is a corporation "organized for profit and having a capital stock represented by shares," as is required by the statute. In a certain sense, such a banking institution is organized for profit — that is, it affords a reasonably safe means for the investment of one's capital; but its organization and the transaction of its business is not for the profit of those who constitute its managing body, except insofar as they may be depositors. But the more serious question is, whether such an institution has a capital stock represented by shares. Can the depositors who place their money temporarily with such an institution, having no right whatever to participate in the management, be regarded as shareholders, and the respective amounts deposited be considered as shares? I think an answer to these questions may be found in the following authorities.

The case of Huntington *v.* Savings Bank, 96 U. S. 388, involved an institution of precisely the same character. The suit was brought by an administrator of a deceased trustee, on the theory that he was entitled to a pro rata of the accumulated profits. In discussing the nature of the corporation, the Supreme Court, among other things, said:

"It is to be noticed that the charter does not authorize the creation of any corporate stock or capital, nor does it contemplate the existence of any other than the deposits which may be made. The corporators are not required to

contribute anything. They are, of consequence, no shareholders. Not a word is said in the instrument respecting any dividends of capital, or even of profits to others than the depositors. Certainly no express authority is given to make dividends to the corporators; and we discover nothing from which such authority can be inferred."

And again,

"The institution having no capital stock, whatever liability, if any, there may be to the corporators, must be satisfied out of the profits made from the deposits."

And with reference to the object of the corporation, it was said:

"It is not a commercial partnership, nor is it an artificial being the members of which have property interests in it, nor is it strictly eleemosynary. Its purpose is rather to furnish a safe depositary for the money of those members of the community disposed to intrust their property to its keeping. It is somewhat of the nature of such corporations as church wardens for the conservation of the goods of a parish, the college of surgeons for the promotion of medical science, or the society of antiquaries for the advancement of the study of antiquities. Its purpose is a public advantage, without any interest in its members."

In Hannon *v.* Williams, 34 N. J. Eq. 258, the court, in considering the nature of a savings bank of this character, said:

"Savings banks differ widely in their objects, organization, and character from ordinary banks and other joint stock companies. They have no capital stock. They are incorporated and organized not for the advantage of the corporators, but solely for the benefit of the depositors. Their object, as stated in some of the early charters of this State is to receive and safely invest the savings of mechanics, laborers, servants, minors, and others, thus affording to such persons the advantages of security and interest for their money, and in this way ameliorating the condition of the poor and laboring classes by engendering habits of industry and frugality.

"Properly organized and conducted a savings bank is a quasi-charitable and purely benevolent institution; its only object, the safe keeping and provident investment of the funds of the depositors. The members of the corporation have no property interests in its funds, of which they are by law constituted the managers and guardians. The depositors, who alone are beneficially interested in the prosperity of the bank, have no voice in its management, nor even in the selection of the persons to whom its management is intrusted."

In Savings Bank *v.* Town of New London, 20 Conn. 111, 117, the Supreme Court of Connecticut, in speaking of the nature of deposits in savings banks, said:

"Deposits are not stock, within the most enlarged use of the word; nor are they regulated as such, but are more like deposits in other banks, drawing a stipulated interest. They are money put into the hands of trustees, to be loaned out; and whether it comes to the trustees from one man or many men, makes no difference in view of the law."

Mr. Justice Field, in Bailey *v.* Clark, 88 U. S. 286, in defining the capital of a corporation, said:

"When used with respect to the property of a corporation or association, the term has a settled meaning; it applies only to the property or means

contributed by the stockholders as the fund or basis for the business or enterprise, for which the corporation or association was formed; and the court therefore held that money borrowed from time to time by a banker and temporarily used in the course of business did not constitute a part of the capital of the banks."

I have been unable to find any authority in which it has been held that a savings bank, organized and doing business as is provided for by the laws of West Virginia, has a capital stock or that its depositors are shareholders.

In the case of Hannon *v.* Williams, supra, the court, in arriving at the conclusion that a depositor of a savings bank could not set off his deposit after the bank had failed against a liability to the bank created by a loan, likened a depositor's relationship in some respects to that of a stockholder as well as a creditor, saying that in prosperity they are the stockholders among whom the profits are divided, while in case of insolvency they are the creditors, among whom the remaining assets are to be distributed; but the court, as heretofore shown, held that such an institution has no real capital stock, and made this remark only by way of argument to show the rights of depositors in cases of the character there under consideration.

From the language of the act creating this excise tax, and the nature of these savings banks, I am constrained to hold that they are not subject to the tax imposed by section 38 of the act of August 5, 1909.

I hardly need add that this conclusion does not apply to so-called savings banks which have a capital stock as other banking institutions.

Respectfully,

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.

APPENDIX FF.

DEPARTMENT OF JUSTICE,
February 21, 1910.

SIR: — I beg to acknowledge receipt of your communication of February 4, 1910, in which you ask my opinion whether, in ascertaining the net income of a corporation holding and dealing in real estate the entire interest paid upon items of indebtedness secured by mortgages on such real estate should be deducted from the gross income, without reference to the amount of capital stock of such company.

This request is predicated upon a communication or brief presented by the "Allied real estate interests of the State of New York, and of allied real estate interests of the City of New York," signed by certain attorneys of the city of New York. I gather from the communication that "allied real estate interests" is not intended as the designation of any corporation or joint stock company, but is intended to suggest that the inquiries propounded in this communication are of common interest to corporations dealing in real estate in the city and State of New York, and therefore a comprehensive ruling is requested, which shall be applicable to all cases coming within the general inquiry put. As to this, I might content myself with a reference to the position consistently adopted by my predecessors that opinions should not be rendered upon merely hypothetical or general questions, but only with respect to actual cases arising in the administration of the law by the respective departments. (99 Op. 82, 355, 421; 10 Op. 50; 13 Op. 531, 568; 19 Op. 331.) However, in view of the character of the statute under consideration and the great importance to many interests affected thereby, and to the fact that the inquiries raised by this communication may be dealt with under two general propositions, I deem it expedient to express an opinion with respect thereto.

The so-called Corporation Tax Law (act of August 5, 1909, section 38) imposes a special excise tax upon the corporations, joint stock companies and associations and insurance companies therein described, to be measured by one per centum upon the net income, which net income by the second paragraph is to be ascertained by deducting from the gross amount of such income received within the year from all sources certain specified items, among which only the two following are necessary to be considered as bearing on the present inquiry, viz.:

"(First.) All the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property
* * *

"(Third) Interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company outstanding at the close of the year, and in the case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits."

It is manifest that with respect to interest on "its" bonded or other indebtedness, the right of deduction and the limitation of that right must be found in the third paragraph above quoted, and that, however burdensome such limitation may appear to be to the particular companies affected thereby, it is nevertheless very clearly expressed by the act of Congress. It surely can not be assumed that Congress, having specifically set a limitation to the amount of interest upon the indebtedness of a corporation which may be deductible from its gross income in reaching the measure of the tax under this law, left the way open in the first clause to eliminate the limitation imposed by the third, so that if in any of the cases suggested by the allied real estate interests, the indebtedness secured by mortgage upon the properties acquired by the respective corporations shall have been assumed by them, and has thereby become their indebtedness, interest on such indebtedness can be deducted only to an amount not exceeding the interest on the paid-up capital stock of the respective corporation. On the other hand, cases are suggested in the communication submitted where a realty corporation takes title to real property subject to a mortgage, but does not assume the indebtedness secured thereby. Under such circumstances, as is stated in the brief, "such mortgage is in no sense its indebtedness, the thing itself, i. e., the real property and not the corporation, is liable for the mortgage and interest thereon, but in order that the corporation may maintain or keep possession of or not be ousted therefrom, the interest must be paid."

This would not be payment by the corporation owning the property subject to such lien of its own indebtedness, because the indebtedness is not "its" bonded or other indebtedness, but an indebtedness created by a third party and charged as a lien upon the land acquired, subject thereto, by the purchasing corporation. The interest accruing upon such charge or incumbrance would certainly fall within the description in the first clause of the second paragraph of the section under consideration as one of the "charges required to be made as a condition to the continued use or possession of property," and therefore would be deductible as such.

Respectfully,

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.

APPENDIX GG.

DEPARTMENT OF JUSTICE,
March 9, 1910.

SIR: — I have the honor to acknowledge receipt of your communication of January 28, 1910, in which you inquire whether, in my opinion, foreign steamship companies engaged in the business of ocean transportation of passengers, freight, and mails in ships owned by them, plying between America and foreign ports, which companies maintain agencies in this country where passenger tickets may be bought and freight received for transportation are corporations subject to the special excise tax provided by the act of August 5, 1909 (36 Stat. 112).

The act in question is, by its provisions, made applicable to all corporations organized under the laws of any foreign country which receive an income from business transacted and capital invested within the United States. But it is first insisted upon the part of these steamship companies that, inasmuch as the receiving and discharging of cargoes and passengers is a mere incident to the principal service rendered by them, which consists in the transportation of their cargoes and passengers over the high seas, they have no income derived from business transacted in the United States.

I am of the opinion that this contention cannot be maintained. These companies have a large amount of capital invested in wharves, warehouses, and other facilities essential to carrying on their business in this country. Their business consists entirely in transporting passengers and goods and merchandise between ports in this country and those of foreign countries, and receiving and discharging the same. Through agents located here all contracts and arrangements incident to such a business at this end of their lines are made, and all exports are delivered to their warehouses and are loaded upon their vessels, and the passengers embark, while they are within the limits of the United States; and likewise while here their imports are unloaded and passengers from foreign ports disembark. If these companies do not transact business in the United States they transact no business in any foreign port, and their entire business is carried on upon the high seas. To such a conclusion I am unable to give assent.

It is next insisted that, inasmuch as they are engaged in the transportation of exports, the tax in question is a tax upon exports, and that the legislation is void as to them under that clause of section 9, article 1, of the Constitution, which provides that "No tax or duty shall be laid on articles exported from any State." In support of this contention the following cases are cited:

Brown *v.* Maryland (12 Wheat. 419), wherein the Supreme Court had under consideration a section of an act passed by the legislature of Maryland, which provided:

"That all importers of foreign articles or commodities, of dry goods, wares, or merchandise by bale or package, or of wine, rum, whiskey, and other distilled spirituous liquors, etc., and other persons selling the same by wholesale, bale, or package, hogshead, barrel, or tierce, shall, before they are authorized

to sell, take out a license as by the original act is directed, for which they shall pay fifty dollars."

The court held that this section, in so far as it applied to importers, was invalid, because it was in effect a tax levied by the State upon imports, which under the Constitution was prohibited.

Almy *v.* California (24 How. 169), wherein it was held that an act passed to provide revenue from a stamp tax on bills of lading for the transportation from any point or place in that State to any point or place without the State of gold or silver coin, gold dust, or gold or silver in bars or other form, and which required that such stamp be attached to every such bill of lading or stamp thereon was invalid because it was the imposition of a tax upon exports.

Fairbanks *v.* United States (181 U. S. 283), wherein it was held that the stamp tax on a foreign bill of lading provided for by the act of June 13, 1898, was equivalent to a tax on the articles for which the bills were given, and was violative of the above quoted provision of the Constitution.

I am of the opinion that the principles decided in these cases are not applicable to the statute now under consideration. The tax imposed by this act is, as declared therein, a "special excise tax with respect to the carrying on or doing business" by the corporation; and I held in an opinion transmitted to you on January 13, 1910, that it is not a tax on the property owned by the corporation, or on the income from such property, but is in the strict and constitutional sense an excise tax; and that, for that reason, the income from the interest on United States bonds should be computed in the gross income of a corporation, and should not be excluded in ascertaining its net income. If I was right in that conclusion, then this tax is not imposed upon exports carried by these steamship companies, or even upon the income derived from the transportation of such exports.

But, aside from this, I think there is a very material distinction between the present act and those involved in the cases above cited. The passengers carried by these companies are not exports within the meaning of this clause of the Constitution. (Crandall *v.* Nevada, 6 Wall. 35.) And Congress has express power to tax imports. Consequently the revenues of these companies are derived from different classes of business, the larger portion of which is subject to taxation. The act does not undertake in its terms to make any distinction between the different kinds of business in which these or any other corporations embraced therein are engaged, but the tax is imposed upon them all alike, not as exporters of merchandise, but as an incident to their entire business. Such were not the facts in either of the cases cited.

In Brown *v.* Maryland, but two classes of persons were mentioned in the act, one importers of the articles designated and the other wholesale dealers in those articles; and under its provisions an importer was required to pay the tax before a sale of the imported articles could be made, regardless of the size of the article or the amount sold. The act therefore imposed the tax upon the importer as such, he being subjected thereto solely because he was the recipient for sale of the imported articles. A careful analysis of the reasoning of the court will show that the decision was rested upon this fact. In support of the holding that the prohibition to tax the imported articles does not cease the moment it lands, the court used the following illustrations:

"The United States have the same right to tax occupations which is pos-

sessed by the States. Now, suppose the United States should require every exporter to take out a license, for which he would pay such tax as Congress might think proper to impose, would the Government be permitted to shield itself from the just censure to which this attempt to evade the prohibitions of the Constitution would expose it by saying that this was a tax on the person, not on the article, and that the legislature had a right to tax occupations? Or, suppose revenue cutters were to be stationed off the coast for the purpose of levying a duty on all merchandise found in vessels which were leaving the United States for foreign countries, would it be received as an excuse for this outrage were the Government to say that exportation meant no more than carrying goods out of the country, and as the prohibition to lay a tax on imports, or things imported, ceased the instant they were brought into the country, to the prohibition to tax articles exported ceased when they were carried out of the country?" (Page 444.)

It will be observed that the first illustration deals with the exporter as such, while the second deals directly with the exported article while in transportation. But the distinction is more clearly drawn in answering the contention that if the act be invalid, then an importer could, without being subject to a tax imposed by the State, sell his goods either as a retailer or peddler, or that silver plate imported for his own use would not be subject to taxation. The court upon this subject said:

"This indictment is against the importer, for selling a package of dry goods, in the form in which it was imported, without a license. This state of things is changed if he sells them or otherwise mixes them with the general property of the State, by breaking up his packages and traveling with them as an itinerant peddler. In the first case the tax intercepts the import as an import, in its way to become incorporated with the general mass of property, and denies it the privilege of becoming so incorporated until it shall have contributed to the revenue of the State. It denies to the importer the right of using the privilege which he has purchased from the United States until he shall have also purchased it from the State. In the last cases the tax finds the article already incorporated with the mass of property by the act of the importer He has used the privilege he had purchased, and has himself mixed them up with the common mass, and the law may treat them as it finds them. The same observations apply to plate or other furniture used by the importer. So, if he sells by auction." (Page 442.)

Therefore, the same article in the hands of the same person may be taxable or not, according to whether it still retains the character of an import.

So, in the other cases cited, the stamp tax was attached to the bill of lading, which accompanied the exported article, and was, by the language of the acts, made applicable to exports as such.

On the other hand in Turpin *v.* Burgess (117 U. S. 504), it was held that a stamp required to be fixed to every package of tobacco intended for exportation, before its removal from the factory was constitutional, because the tobacco had not become an article of export; and in discussing the question, in referring to the two clauses of the Constitution wherein taxes upon exports are prohibited, and the States are prohibited from imposing, without the consent of Congress, taxes upon imports, the court said:

"The prohibition in both cases has reference to the imposition of duties on goods by reason or because of their exportation or intended exportation, or

while they are being exported. That would be laying a tax or duty on exports or on articles exported within the meaning of the Constitution, but a general tax laid on all property alike, and not levied on goods in course of exportation, or because of their intended exportation, is not within the constitutional prohibition." (Page 507.)

And in Cornell *v.* Coyne (192 U. S. 418), wherein it was held that filled cheese was not exempted from taxation under this clause of the Constitution because manufactured expressly for exportation, the court quoted with approval the foregoing language of the court in Turpin *v.* Burgess.

It appears, therefore, that the validity of an act, under this clause of the Constitution, which taxes an article, depends not upon whether it will increase the price of the article when exported, but whether it is taxed as an export. In like manner and for the same reason the validity of a tax imposed upon a business depends not upon the fact that, incidentally, along with its other business the concern is engaged in exporting articles or carrying exports, and that the tax may thus incidentally increase the price of such articles, but whether it is laid upon an exporting business as such. If it were otherwise, and if the carrying of an article exempted from taxation under this clause also exempted the business of the carrier, then no tax could be imposed by either the United States or any State upon any of the principal railroad companies in the country, as all the main lines are daily engaged in carrying commerce which has been consigned from foreign ports to the seaboard for shipment, and while being so carried such commerce, if not being technically exported, is certainly "in the way of exportation," as suggested in Turpin *v.* Burgess (117 U. S. 508).

The question here under consideration should be carefully distinguished from that involved in the numerous cases in which taxes, either direct or indirect, imposed by States have been held unconstitutional under that clause which vests power in Congress to regulate commerce with foreign nations among the several States and with the Indian tribes. According to numerous decisions of the Supreme Court of the United States, this clause prohibits the States from interfering, by any character of legislation, with interstate commerce, and hence any taxation which places a burden upon that commerce and interferes therewith, is unlawful, regardless of whether it be a tax laid upon the transportation of the subjects of Congress, or upon the receipts derived from that transportation, or upon the occupation or business of carrying it on. This is not true, however, as to the clause here in question. For a tax to be violative of this clause it must be imposed upon the exported article, and the courts have never gone further than to hold that it is so imposed, within the spirit of this clause, when the tax may be directly traceable to such article as an export.

There appears another reason why these companies cannot escape this tax. In Aguirre *v.* Maxwell (3 Blatch. 140) it was insisted that a tonnage tax upon a foreign vessel was contrary to this provision of the Constitution; but the court held that:

"It is within the discretion of Congress to totally inhibit the import or export trade in foreign vessels to or from our ports or to grant them the privilege of bringing in or carrying out cargoes on such conditions and under such regulations as may be regarded most beneficial to the United States."

And the tonnage tax remains to this day on our statute books, the last

enactment being section 36 of the act, of which the law under consideration is section 38. If the tax upon the tonnage, that is, the carrying capacity of the vessel, is not a tax upon the merchandise it carries, then it cannot be perceived how a tax "with respect to the carrying on or doing business" by the owners of the vessel can be a tax on such merchandise. Certainly the latter tax is further removed from the merchandise than the former. And if the owner of the foreign vessel can be made to pay the tonnage tax on account of the nationality of the vessel, there can be no reason why he cannot be made to pay a tax on his business, when such business consists entirely in the transportation of passengers and merchandise in foreign vessels.

I am of the opinion, therefor, that the steamship companies in question are corporations subject to the excise tax created by section 38 of the act of August 5, 1909.

Respectfully,

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.

APPENDIX HH.

DEPARTMENT OF JUSTICE,
March 31, 1910.

Sir: In your communication of February 4, 1910, you ask my opinion with reference to whether certain business concerns which are known as the Snow Associates, the Department Store Trust, the Farlow Real Estate Trust, and the Broomfield Building Trust fall within the provisions of section 38 of the act of August 5, 1909 (36 Stat. 112) which provides for an excise tax with respect to the carrying on or doing business by corporations, joint stock companies and associations; and in reply thereto I have the honor to say:

All of these companies have the same general plan of organization and the Snow Associates will be taken as an example.

This company was organized under and by an agreement and declaration of trust which contained the following provisions: The purpose of the trust was the improving and holding of four parcels of real estate which were particularly described, and the title thereto was vested in three persons, as trustees, who were to perform their duties under the powers granted by the declaration of trust. The title to the property was vested exclusively in the trustees, so that the shareholders were without interest therein other than that conferred by their shares issued under the terms of the trust, and have no right to call for partition, account or division of the property, rights or interests. The capital is $1,224,000, divided into shares of $100 each. The trustees issued certificates to the shareholders for the number of shares to which each was entitled. In addition to the shares, amounting to $1,224,000, the trustees retained in their hands shares of the par value of $100,000 for the purpose of raising funds to improve the property and to purchase additional real estate, to pay for mortgages, etc. At meetings of the shareholders each share is entitled to one vote. Shareholders may transfer their shares on surrender of their certificates upon books to be kept by the trustees, in the manner usual for the transfer of shares of stock of corporations, or in such other manner as the trustees may prescribe. The death of a shareholder does not terminate the trust or give his legal representative a right to an accounting or to take any action in the courts or otherwise against the shareholders, but entitles the legal representative of the deceased to receive a new certificate in place of the certificate held by the deceased. No assessments can be made upon the shareholders, and the instrument contains a stipulation that they are exempt from personal liability on account of contracts entered into or torts committed by the trustees. The shareholders meet annually, and they have also special meetings as may be called by the trustees. The shareholders at such meetings fill vacancies in the number of trustees and may depose any or all of the trustees and elect others in their place. The trustees are empowered to execute instruments which are conclusive upon the associates. The trust shall continue for twenty years after the death of the last surviving original subscriber; provided that a majority in interest of the total number of shares may direct a sale of the property at any time, and upon such sale and distri-

bution among the shareholders in proportion to their interest the trust shall be terminated. The trustees are vested with full power of leasing and letting, and have money for temporary exigencies, which shall bind the assets of the trust but not the shareholders individually. They also have the power to mortgage the property for a sum not exceeding $100,000 for the purpose of making improvements or to extinguish liens; and they determine the amount of net income and declare such dividends as in their opinion may be judicious, and invest in such manner as they see fit any moneys which they may have on hand.

This association possesses all of the essential elements of a common-law joint stock company, which is defined to be:

"An association of persons for the purpose of business, having a capital stock divided into shares and governed by articles of association which prescribe its objects, organization and procedure and the rights and liabilities of the members, except that the articles cannot release the members from their liability as partners, to the creditors of the company;"

and is otherwise defined as:

"An association of individuals possessing a common capital divided into shares of which each member possesses one or more. These shares represent the interests of the members and are transferable by the owners without the consent of the other members, or the creditors of the association." (2 Cook on Corporations, 504.)

In Spotswood *v.* Mooris (2 Idaho 360) it was held that any corporation, association or joint stock company may be formed by individuals for the purchase of a single tract of real estate, the title to which may be taken in the trustee.

There can be no doubt that this concern is an association organized for profit and having a capital stock represented by shares. But it is earnestly insisted on behalf of these companies that the statutory requirements that a company, in order to be amenable to the tax, shall be "organized under the laws of the United States or of any State or Territory of the United States," has reference to statutory laws which prescribe specifically a method or plan of organization, and which confer franchises upon the body when organized; in other words, that the joint stock companies and associations contemplated by the act are only such as have some form of corporate existence. If this were true, then the phrase "joint stock company or association" would be surplusage, but I am not willing to give assent to such a construction.

That this company has an organization goes without saying. Its trustees compose a board of managers, upon whom rest the same duties as those imposed upon the board of directors of a corporation. The trustees may be discharged and their successors elected in the same way or in a way similar to that by which the directors of a corporation may be discharged and their successors elected. A change of trustees affects the business of the concern no more than the change of directors of a corporation. Trustees come and go, but the title to the property remains with those having charge of its affairs, and its business is still conducted by them precisely the same as the business affairs of a corporation continue with it after a change of directors. The same conditions exist as to the shareholders. The shares are transferable by assignment in like manner as the shares of a corporation. Such assignment has no effect whatever on the business of the company, and the shareholders possess

only the rights of drawing dividends and participating indirectly by vote in the management of the concern, the same as are enjoyed by the shareholders of a corporation. Under its organization, the period of its existence is fixed just as is that of a corporation by statute, and the death of its trustees or shareholders do not terminate or affect its existence any more than do the death of the directors or shareholders of a corporation; and in the period fixed for its existence by the articles of association it can be dissolved only by vote of its shareholders, which power is likewise possessed by the shareholders of a corporation. It is true that its shareholders cannot by contract free themselves from personal liability; but in Liverpool Insurance Co. *v.* Massachusetts (77 U. S. 566, 575) it was held that the fact that the shareholders of a joint stock company organized under an act of Parliament, which expressly declared that such company should not constitute a corporation, were individually liable for its debts, did not relieve it from taxation under a statute which imposed a tax upon "each fire, marine and fire and marine insurance company incorporated or associated under the laws of any government or State other than one of the United States."

In short, the organization of this company is just as compact, and in fact, is practically the same, as that of an ordinary corporation organized under a general or special statute.

Nor can it be denied that its organization is sanctioned by the laws of Massachusetts and that it obtains its vitality from those laws, just as much as a corporation organized under a special act of the legislature of that State derives its vitality from such act. Such an association, therefore, is based on the laws of Massachusetts, and, in fact, is organized thereunder.

By the expression "laws of a State," as used in statutes, reference may be had to the common law, as well as the statutory law of such State (Lycoming Fire Insurance Co. *v.* Medad Wright & Son, 60 Vt. 515; State *v.* Dyer, 67 Vt. 690, 697).

I am of the opinion, therefore, that these various business organizations are "joint stock companies or associations organized for profit and having a capital stock represented by shares," organized under the laws of the state of Massachusetts within the meaning of the excise law enacted by section 38 of the act of August 5, 1909, and that they are amenable to the tax created thereby.

Respectfully,

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.

APPENDIX II.

DEPARTMENT OF JUSTICE,
April 2, 1910.

SIR: Your letter of March 26, 1910, was received. You state therein that a corporation, which was engaged in business on August 5, 1909, and for some time thereafter, but prior to December 31, 1909, became legally dissolved in compliance with the provisions of the statutes of the state under which it was organized, contends that it is not liable for the excise tax created by section 38 of the revenue act of August 5, 1909, and you ask my opinion upon the following questions:

First. Whether or not such corporation is liable for the excise tax created by said section 38 of the act of August 5, 1909.

Second. If so liable, whether a lien exists on the assets of said corporation to secure the payment of said tax, and incidentally when the lien attaches to the property of a corporation, joint stock company or association liable for taxes under said act; and

Third. If no such lien exists, by what method the tax can be collected from such corporation.

In answer to these questions I will say:

1. In the first clause of section 38, act of August 5, 1909, it is provided "that every corporation * * * now or hereafter organized under the laws of the United States, or of any State * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation * * * equivalent to 7 per centum of the entire net income over and above $5,000 received by it from all sources during such year." That is, the tax is payable annually, and it is imposed "with respect to the carrying on or doing business by such corporation," and the amount of tax is fixed at 1 per centum upon its net income above $5,000 received during such year — that is, the year during which the business is transacted with reference to which the tax is imposed. By the third paragraph it is provided that the income of the corporation shall be computed for the year ending December 31, 1909, and for each calendar year thereafter. Therefore, the assessment of the tax is always for the year preceding its collection and not for the year within which the collection is made, and the present assessment is for the year 1909. It follows, therefore, that any corporation which was engaged in business after the approval of the act on August 5, 1909, is amenable to this tax.

2. It will be observed that there is no express provision in this act which creates a lien upon the property of the corporation, joint stock company or association to secure the payment of the tax. However, by section 3186 Revised Statutes, as amended by the act of March 1, 1879 (20 Stat. 331) it is provided generally with reference to internal revenue taxes that "if any person liable to pay any tax neglects or refuses to pay the same after demand, the account shall be a lien in favor of the United States from the time when

the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights belonging to such person;" and in the eighth paragraph of said section 38, act of August 5, 1909, it is provided that "all laws relating to the collection, remission and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section." The method of assessing the tax and collecting the same, as provided for in the act itself and in the general statutes, appears to be as follows: On or before March 1 of each year returns are required to be made by the corporations, joint stock companies and associations liable for the tax to the collector of internal revenue of the district in which they have their principal place of business. These returns are forwarded by the collector to the Commissioner of Internal Revenue, who shall make the assessment thereon. By section 3183 Revised Statutes, the duty of collecting all taxes in their respective districts is imposed by law on the collectors or their deputies, and by section 3184 it is provided that the collector shall in person, or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, specifying the manner in which such notice shall be given. And in the fifth paragraph of section 38 of the act of 1909 it is provided that assessments shall be made, and the several companies liable to the tax shall be notified of the amount for which they are liable on or before the 1st day of June of each successive year. Therefore it is the duty of the Commissioner of Internal Revenue to send to each collector a list of the companies liable for the tax in his district, showing the amounts for which they are liable within such time that the collector may give the required notice to such companies on or before the 1st day of June, and upon such lists the collections are required to be made. These are the only lists which by statute are required to be sent to the collectors; and under the provision of section 3186 Revised Statutes, as amended, which is above quoted, the lien is fixed upon the assets of the corporation when this list comes into the collectors' hands. Therefore if the corporation in question had distributed all of its assets and had become dissolved in the manner provided for by law prior to December 31, 1909, then when the list of assessments came into the hands of the collector there was neither corporation nor assets, and nothing upon which the lien could attach, and consequently no lien exists to secure the payment of the taxes.

3. Notwithstanding the fact that the particular method of collecting this excise tax is prescribed in the statute, yet such remedy is not exclusive, and the government may resort to the common-law method of collecting the same. Such was the holding of the Supreme Court of the United States in Savings Bank *v.* The United States (19 Wall. 227, 240), with reference to the collection of a tax under an act which levied a tax of 5 per centum on all dividends in scrip or money declared due to stockholders, policyholders or depositors as part of the earnings, income or gains of any bank, trust company, savings institution, and of any insurance company. The dissolution of a corporation does not extinguish its liabilities; and through courts of equity creditors may pursue its assets into the hands of any person who is not a bona fide purchaser. (Mumma *v.* Potomac Co., 8 Pet. 281, 286; Curran *v.*

Arkansas, 15 How. 304, 307; Railroad Co. *v.* Howard, 7 Wall. 392, 410; Scammon *v.* Kimball, 92 U. S. 362, 367.)

In Railroad Company *v.* Howard the court said:

"Assets derived from the sale of the capital stock of the corporation, or of its property, become, as respects creditors, the substitutes for the things sold, and as such they are subject to the same liabilities and restrictions as the things sold were before the sale, and while they remained in the possession of the corporation. Even the sale of the entire capital stock of the company and the division of the proceeds of the sale among the stockholders will not defeat the trust nor impair the remedy of the creditors, if any debts remain unpaid, as the creditors in that event may pursue the consideration of the sale in the hands of the respective stockholders and compel each one, to the extent of the fund, to contribute pro rata toward the payment of their debts out of the moneys so received and in their hands."

If the corporation in question engaged in business after the approval of the act of August 5, 1909, then it was liable for the tax, though it may not have become due until after the corporation was dissolved; and the government may collect the tax by pursuing the assets of the corporation into the hands of the stockholders, in the same manner as that by which any other creditor might obtain satisfaction of his debts.

Respectfully,

The Secretary of the Treasury. GEORGE W. WICKERSHAM.

APPENDIX JJ.

FORM OF RETURN BY INSURANCE COMPANIES.

FORM No. 634.

To be filled in by Collectors.

List No.....

Class.....

.....District of.....

To be filled in by Internal Revenue Bureau.

Assessment List .....19....

Page ..... Line .....

Date Received ..... 19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Insurance Companies.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located in ....., in the State of .....

1. Total amount of paid-up stock outstanding at close of year.		$.....
2. Total amount of bonded or other indebtedness outstanding at close of year.....		.....
3. GROSS INCOME (See Note A).....		.....
DEDUCTIONS.		
4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation (See Note B).....		.....
5. (*a*) Total amount of losses sustained January 1 to December 31.....	$.....	
(*b*) Total amount of depreciation January 1 to December 31	.....	
(*c*) Total amount other than dividends paid within the year on policy and annuity contracts.	.....	
(*d*) Total amount of net addition required by law to be made within the year to reserve fund	.....	
Total (See Note B).....		$.....
6. Total amount of interest January 1 to December 31 on bonded indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note B)...	$.....	
7. (*a*) Total taxes paid January 1 to December 31 imposed under authority of the United States or any State or Territory thereof.	.....	
(*b*) Foreign taxes paid.....	.....	
Total (See Note B).....		$.....

8 Amount received by way of dividends upon stock of other corporations, joint stock companies, associations and insurance companies subject to this tax.....	$.....
Total Deductions	.....
9. Net Income	$.....
10. Specific deductions from net income allowed by law.....	$5,000 00
11. Amount on which tax at one per centum is to be calculated for assessment	$.....

STATE OF..... } *ss.:*
COUNTY OF ..... }

....., President, and ....., Treasurer, of the ..... corporation, whose return of annual net income is set forth above, being severally duly sworn each for himself, deposes and says, that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deductions whatsoever, received from all sources by said corporation during the year stated, and that the net income therein set forth is the full amount on which the tax proper is to be assessed.

.....
President.

.....
Treasurer.

Sworn and subscribed to before me this .. day of ....., 19.. }

..... (Seal.)

(NOTE A.)—The gross income shall consist of the total of the gross revenue derived from the operation and management of its business and properties, together with all amounts of income, including dividends on stock of organizations to this special excise tax from other sources as shown by the entries on its books from January 1 to December 31 of the year for which the return is made.

(NOTE B.)—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books from January 1 to December 31.

(NOTE C.)—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal office of the corporation making the return, on or before March 1.

APPENDIX KK.

FORM OF RETURN BY BANKS AND OTHER FINANCIAL INSTITUTIONS.

FORM No. 635.

To be filled in by Collector.
List No.....
Class.....
.....District of.....

To be filled in by Internal Revenue Bureau.
Assessment List .....19....
Page ..... Line .....
Date Received ..... 19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Banks and Other Financial Institutions.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ....., in the State of .....

1. Total amount of paid-up stock outstanding at close of year.	$.....	
2. Total amount of bonded or other indebtedness outstanding at close of year.....	.....	
3. Gross Income (See Note A).....	.....	

DEDUCTIONS.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation (See Note B).....	.....	
5. (a) Total amount of losses sustained January 1 to December 31.....	$.....	
(b) Total amount of depreciation January 1 to December 31	.....	
Total (See Note B).....		$.....
6. (a) Total amount of interest January 1 to December 31 on bonded or other indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note B).....	.....	
(b) Total amount of interest paid within the year on deposits.....	.....	
Total.....		$.....
7. (a) Total taxes paid January 1 to December 31, imposed under authority of the United States or any authority thereof	$.....	
(b) Foreign taxes paid.....	.....	
Total (See Note B).....		$.....

8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations and insurance companies subject to this tax..... $.....

Total Deductions ..... $

9. Net Income ..... $.....

10. Specific deduction from not income allowed by law..... $5,000 00

11. Amount on which tax at one per centum is to be calculated for assessment ..... $.....

STATE OF..... }
COUNTY OF ..... } *ss.:*

....., President, and ....., Treasurer of the ..... corporation, whose return of annual net income it set forth above, being severally duly sworn, each for himself deposes and says, that the foregoing report and the several items therein set forth, are to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of the gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount on which tax is proper to be assessed.

.....
President.
.....
Treasurer.

Sworn and subscribed to before me this .. day of ....., 19.. }
..... (Seal.)

(NOTE A.)—Gross income shall consist of the total amount of gross revenue derived from the operation and management of its business and properties, together with all amounts of income, including dividends on stock of other corporations, joint-stock companies and associations subject to this tax, derived from all sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.

(NOTE B.)—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31.

(NOTE C.)—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal office of the corporation making the return, on or before March 1.

APPENDIX LL.

FORM OF RETURN BY TRANSPORTATION CORPORATIONS.

FORM No. 636.

To be filled in by Collector.	To be filled in by Internal Revenue Bureau.
List No.....	Assessment List .....19....
Class.....	Page ..... Line .....
.....District of.....	Date Received ..... 19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Transportation Corporations.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ....., in the State of .....

1. Total amount of paid-up stock outstanding at close of year.		$.....
2. Total amount of bonded or other indebtedness outstanding at close of year.....		.....
3. Gross Income (See Note A).....		.....
DEDUCTIONS.		
4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation (See Note B).....		.....
5. (*a*) Total amount of losses sustained January 1 to December 31.....	$.....	
(*b*) Total amount of depreciation January 1 to December 31.....	.....	
Total (See Note B).....		$.....
6. Total amount of interest January 1 to December 31 on bonded indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note B).....		.....
7. (*a*) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof.	.....	
(*b*) Foreign taxes paid.....	.....	
Total (See Note B).....		$.....
8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations and insurance companies subject to this tax.....	.....	
Total deductions		$.....

9. Net Income	$.....
Specific deductions from net income allowed by law.....	5,000 00
10. Amount on which tax at one per centum is to be calculated for assessment	$.....

STATE OF.....
COUNTY OF..... } *ss.:*

....., President, and ....., Treasurer of the ..... corporation, whose return of the annual net income is set forth above, being severally duly sworn, each for himself deposes and says, that the foregoing report and the several items therein set forth, are to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount on which tax is proper to be assessed.

.....
President.

.....
Treasurer.

Sworn and subscribed to before me
this .. day of ....., 19..
..... (Seal.)

(NOTE A.)—Gross income shall consist of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint-stock companies and associations subject to this tax) derived from all sources as shown by the entries on its books from aJnuary 1 to December 31 of the year for which the return is made.

(NOTE B.)—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which the return is made.

(NOTE C.)—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal office of the corporation making the return, on or before March 1.

APPENDIX MM.

FORM OF RETURN BY MANUFACTURING CORPORATIONS.

(FORM No. 637.)

To be filled in by Collectors.
List No.....
Class.....
.....District of.....

To be filled in by Internal Revenue Bureau.
Assessment List .....19....
Page ..... Line .....
Date Received .....19....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Manufacturing Corporations.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ....., a corporation, the principal place of business of which is located at ....., in the State of.....

1. Total amount of paid-up stock outstanding at close of year.		$.....
2. Total amount of bonded or other indebtedness outstanding at close of year.....		.....
3. Gross Income (See Note A).....		.....
DEDUCTIONS.		
4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation (See Note B).....		.....
5. (*a*) Total amount of losses sustained January 1 to December 31.....	$.....	
(*b*) Total amount of depreciation January 1 to December 31	.....	
Total (See Note B).....		$.....
6. Total amount of interest January 1 to December 31 on bonded or other indebtedness to an amount not to exceed the amount of paid-up capital at close of year (See Note B.)	.....	
7. (*a*) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof	.....	
(*b*) Foreign taxes paid.....	.....	
Total (See Note B).....		$.....
8. Amount received by way of dividends upon stock of other corporations, joint stock		

companies, associations, and insurance companies subject to this tax..... $..... $.....

Total Deductions . . .. $.....

9. Net Income . . .. $.....

10. Specific deduction from net income allowed by law..... 5,000 00

11. Amount on which tax at one per centum is to be calculated. $.....

STATE OF..... } ss.:
COUNTY OF..... }

..... President, and ..... Treasurer of the ..... corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount on which the tax is proper to be assessed.

.....
President.

.....
Treasurer.

Sworn and subscribed to before me this ... day of ....., 19.. }

..... (Seal.)

(NOTE A.) — The gross income received during the year from all sources shall in the case of a manufacturing corporation consist of the total amount ascertained through an accounting that shows the difference between the price received for the goods as sold and the cost of such goods as manufactured. The cost of goods manufactured shall be ascertained by an addition of a charge to the ammount of the cost of goods as manufactured during the year, of the sum of the inventory at the beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added items of income received during the year from all sources, including dividends received on stock of other corporations, joint stock companies and associations subject to this tax. In the determination of the cost of goods manufactured and sold as above such credit shall comprehend all charges for maintenance and operation of the manufacturing plant, but shall not embrace allowances for depreciation or losses, which items shall be taken account of under the proper heading above as a deduction.

(NOTE B.) — The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation, making the return and entered as such on its books from January 1 to December 31, of the year for which the return is made.

(NOTE C.) — This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the District in which is located the principal office of the corporation making the return, on or before March 1st.

APPENDIX NN.

FORM OF RETURN BY MERCANTILE CORPORATIONS.

FORM No. 639.

To be filled in by Collectors.	To be filled in by Internal Revenue Bureau.
List No.....	Assessment List.....19....
Class.....	Page.....Line.....
.....District of.....	Date Received.....19..

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Mercantile Corporations.

(Corporations whose principal business is buying and selling.)

RETURN OF NET INCOME received during the year ending December 31, 19.., by ..... a corporation, the principal place of business of which is located at ..... in the State of .....

1. Total amount of paid-up stock outstanding at close of year.		$.....
2. Total amount of bonded or other indebtedness outstanding at close of year.....		.....
3. Gross Income (See Note A).....		.....
DEDUCTIONS.		
4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation (See Note B).....		.....
5. (*a*) Total amount of losses sustained January 1 to December 31.....	$.....	
(*b*) Total amount of depreciation January 1 to December 31	.....	
Total (See Note B).....		$.....
6. Total amount of interest January 1 to December 31 on bonded or other indebtedness to an amount not to exceed the amount of paid-up capital at close of year (See Note B.)	.....	
7. (*a*) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof	.....	
(*b*) Foreign taxes paid.....	.....	
Total (See Note B).....		$.....
8. Amount received by way of dividends upon stock of other corporations, joint stock		

companies, associations, and insurance companies subject to this tax..... $..... $.....

Total Deductions . . .. $.....

9. Net Income . . .. $.....

10. Specific deduction from net income allowed by law..... 5,000 00

11. Amount on which tax at one per centum is to be calculated for assessment . . .. $.....

STATE OF.....
COUNTY OF..... } *ss.:*

..... President, and ..... Treasurer of the ..... corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself deposes and says, that the foregoing report and the several items therein set forth are to the best of his knowledge and belief, and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income without any deduction whatsoever received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount on which the tax is proper to be assessed.

.....
President.

.....
Treasurer.

Sworn and subscribed to before me this ... day of ....., 19.. }

.....(Seal.)

(NOTE A.) — The gross amount of income received during the year from all sources shall in the case of a mercantile corporation consist of the total amount ascertained through inventory or its equivalent, which shows the difference between the price received for goods sold, and the cost of goods purchased during the year, with an addition of a charge to the account of the sum of the inventory at the beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint stock companies and associations subject to this tax. In determining this amount no account shall be taken of allowances for depreciation or losses, which items shall be taken account of under the proper heading above as a deduction.

(NOTE B.) — The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which the return is made.

(NOTE C.) — This form properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal office of the corporation, making the return on or before March 1.

APPENDIX 00.

FORM OF RETURN BY MISCELLANEOUS CORPORATIONS.

FORM No. 638.

To be filled in by Collectors.
List No.....
Class.....
.....District of.....

To be filled in by Internal Revenue Bureau.
Assessment List.....19....
Page.....Line.....
Date Received and Filed.....19..

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 38, Act of Congress, approved August 5, 1909.)

Miscellaneous Corporations.

RETURN OF NET INCOME received during the year ending December 31, 19.., by ..... a corporation, the principal place of business of which is located at ..... in the State of .....

1. Total amount of paid-up stock outstanding at close of year.		$.....
2. Total amount of bonded or other indebtedness outstanding at close of year.....		.....
3. Gross Income (See Note A).....		.....
DEDUCTIONS.		
4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation (See Note B).....		.....
5. (*a*) Total amount of loss sustained January 1 to December 31.....	$.....	
(*b*) Total amount of depreciation January 1 to December 31	.....	
Total (See Note B).....		$.....
6. Total amount of interest January 1 to December 31 on bonded indebtedness to an amount not to exceed amount of paid-up capital at close of year (See Note B.).....	.....	
7. (*a*) Total taxes paid January 1 to December 31, imposed under authority of the United States or any State or Territory thereof	.....	
(*b*) Foreign taxes paid.....	.....	
Total (See Note B).....		$.....
8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax.....	.....	
Total Deductions		$.....

9. Net Income . . .. $.....
10. Specific deduction from net income allowed by law..... 5,000 00

11. Amount on which tax at one per centum is to be calculated. $.....

STATE OF..... } ss.:
COUNTY OF..... }

..... President, and ..... Treasurer of the ..... corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself deposes and says that the foregoing report and the several items therein set forth, are, to the best of his knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount on which tax is proper to be assessed.

.....
President.

.....
Treasurer.

Sworn and subscribed to before me this ... day of ....., 19.. }

.....(Seal.)

(NOTE A.) — Gross income consists of the total of the gross revenue derived from the operation and management of its business and properties, together with all amounts of income from other sources including dividends on stock of other organizations subject to this special tax received, as shown by entries upon its books from January 1 to December 31, of the year for which return is made.

(NOTE B.) — The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which return is made.

(NOTE C.) — This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the District in which is located the principal office of the corporation making the return on or before March 1.

APPENDIX PP.

Bill of Complaint in the case of Stella P. Flint, as General Guardian of the Property of Samuel N. Stone, Jr., a Minor, Plaintiff, *v.* Stone Tracy Company et al., Defendants, as Filed in the Circuit Court of the United States for the District of Vermont (No. 747, October Term, 1909, in the Supreme Court of the United States).

The first ten paragraphs of the Bill of Complaint, in the first of what are known as "The Federal Corporation Tax Cases," merely recite the circumstances peculiar to the case. The remaining allegations of the pleadings are as follows:

"Eleventh. Your orator further avers that the provisions of the tax on corporations provided for in the said act of Congress as aforesaid are unconstitutional, null and void, in that the requirement to make and file the said return and that the requirement that such return shall become a matter of public record and the requirement to pay said tax are burdens and taxes upon the said charter and franchises granted as aforesaid by the State of Vermont and on the right and power of the State of Vermont to grant, maintain, and preserve the same to the defendant corporation, and are a burden and tax upon a prerogative, power, instrumentality, and function of sovereignty belonging to the State of Vermont and which were never agreed to either expressly or by implication by the State of Vermont or the people of the State of Vermont at the time the said State was admitted into the Union or before or since that time.

"Twelfth. Your orator further avers that the said provisions of the Act of Congress aforesaid are unconstitutional, null and void and in violation of the Fifth Amendment of the Constitution of the United States in that under said provisions of law the defendant corporation will be deprived of its property without due process of law, and especially in this: That through the publicity of its business the privacy of its affairs will be largely destroyed, that its chief competitor, the said firm of Dwight, Tuxbury & Sons, and all other persons, will be able to gain an intimate knowledge of what have hitherto been private affairs of the defendant corporation and its trade secrets, while no corresponding publicity of the private affairs and trade secrets of the said firm of Dwight, Tuxbury & Sons will be required and no similar invasion of the private affairs or trade secrets of the said firm of Dwight, Tuxbury & Sons will be permitted; that the said assessment, if made, will be laid upon the defendant corporation, and not upon its chief competitor, the said firm of Dwight, Tuxbury & Sons, although said firm is carrying on the same character of business next door to the place of business of the defendant corporation, and employing, as your orator is informed and verily believes, approximately the same amount of capital; and that by reason of the said unjust advantage which would be given to the said firm of Dwight, Tuxbury & Sons by compliance with the said provisions of the said Act of Congress, your orator avers that the business of the defendant corporation will be forced to surrender to the State of Vermont the charter and franchise granted as aforesaid and which it now owns and has a right to enjoy and will be obliged to dispose of its assets, wind up its affairs and go into voluntary dissolution.

"Thirteenth. Your orator further avers that the said provisions of the Act of Congress aforesaid are unconstitutional, null and void and in violation of the Fifth Amendment to the Constitution of the United States in that under said provisions of law the private property of the defendant corporation will be taken for public use without just compensation and without any compensation whatever, and especially in this: That the private affairs, books, papers, records, business and trade secrets of the defendant corporation and the contents of its books, papers, and records are taken for publication and will be given to the Collector of Internal Revenue and to the Commissioner of Internal Revenue and to the public in the form of public records.

"Fourteenth. Your orator further avers that the said provisions of the Act of Congress aforesaid are unconstitutional, null and void and in violation of the Fifth Amendment to the Constitution of the United States and violate the right of the defendant corporation to be secure in its papers, effects, books, records, business, private affairs, and trade secrets, against unreasonable searches and seizures in this: That by said provision of law the defendant corporation will be obliged to disclose to its chief competitor, the said firm of Dwight, Tuxbury & Sons, and also to the Collector of Internal Revenue and to the Commissioner of Internal Revenue, and to the public its papers, effects, books, records, business, private affairs, and trade secrets and the contents of its papers, books, and records in the respects hereinbefore specified, and as specified in said act.

"Fifteenth. Your orator further avers that the said provisions of the Act of Congress aforesaid are unconstitutional, null, and void, and in violation of the Constitution of the United States, in that the depriving of the defendant corporation of its property without due process of law and the taking of the private property of the defendant corporation for public use without just compensation and the violation of the right of the defendant corporation to be secure in its papers and effects against unreasonable searches and seizures as hereinbefore set forth are a burden upon the said charter and franchises granted as aforesaid by the State of Vermont and upon the right and power of the State of Vermont to grant, maintain, and preserve the same to the defendant corporation, and are an invasion and burden upon a prerogative, power, instrumentality, and function of sovereignty belonging to the State of Vermont and which were never agreed to either expressly or by implication by the State of Vermont or the people of the State of Vermont at the time the said State was admitted into the Union or before or since that time.

"Sixteenth. Your orator further avers that the said provisions of the Act of Congress aforesaid are unconstitutional, null, and void and in violation of the Tenth Amendment to the Constitution of the United States in that the requirements of said provisions are a burden and tax upon and in interference with the powers of the State of Vermont and the other States of the Union expressly reserved to charter and incorporate corporations and to grant charters and franchises to such corporations.

"Seventeenth. Your orator further avers that the said provisions of the Act of Congress aforesaid are unconstitutional, null, and void and in violation of the Constitution of the United States in that the said so-called special excise tax with respect to carrying on or doing business is not in reality a special excise tax with respect to carrying on or doing business by the defendant corporation or by any corporation or joint stock company or association, except

insurance companies, but is in reality a direct tax upon the said charter and franchise of the defendant corporation and the charters and franchises of all other corporations within the provisions of said act, and is not apportioned among the several States according to their population as required by the Constitution of the United States.

"Eighteenth. Your orator further avers that if the said tax shall be held not to be a direct tax upon the charter and franchise of the defendant corporation and upon the charters and franchises of all other corporations, except insurance companies within the provisions of said Act, then the said provisions are unconstitutional, null, and void in that the provisions and the said tax are not uniform throughout the United States or throughout any one of the United States or its Territories or the District of Columbia or Alaska, and your orator avers that such provisions and the said tax are not uniform within the class or in respect to the property or subjects selected for taxation, except insurance companies, and that the said provisions and tax, while stated to embrace and affect and be levied upon the carrying on and doing business in realty, touch only corporations and joint stock companies, and leave free from the operation of said provisions and tax all individuals and copartnerships, firms, although carrying on and doing the same business or the same kind of business or the same class of business as the corporations and joint stock companies. And your orator further avers that in many other respects the said provisions and the said tax are not uniform throughout the United States and that the said provisions and tax are theretofore unconstitutional, null, and void.

"Nineteenth. Your orator further shows that this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance, and that she has duly requested the defendant corporation and each of them in writing to omit and refuse to prepare and file the said return and to refrain from paying the said tax and to contest the constitutionality of the said provisions of law and to apply to a court of competent jurisdiction to determine the liability under the said provisions, and that a copy of said request is hereto annexed and marked "Exhibit A" and made a part of this bill of complaint; but that the defendant corporation and a majority of its directors have refused and still refuse and intend omitting to comply with your orator's demand, and as your orator is informed and verily believes, have resolved and determined and intend to comply with all and singular the said provisions of the said Act of Congress and to make and file the return aforesaid with the Collector of Internal Revenue and voluntarily pay the said assessment if any is made. A copy of the refusal of the defendant corporation and a majority of its directors is hereby annexed to this Bill of Complaint and marked "Exhibit B."

"Twentieth. Your orator further shows that if the said return is made and filed it will result as hereinbefore alleged, in great and irreparable injury to the defendant corporation and its business, and to your orator and to all other stockholders of the defendant corporation and will involve the defendant corporation in great and irreparable damage, all to the irreparable damage of your orator and all of the stockholders of the defendant corporation."

APPENDIX QQ.

EXTRACTS FROM UNITED STATES REVISED STATUTES RELATIVE TO COLLECTION OF INTERNAL REVENUE TAXES.

U. S. R. S. sec. 161. The head of each department is authorized to prescribe regulations not inconsistent with law, for the government of his department, conduct of its officers and clerks, distribution and performance of its business, and the cost, use, and preservation of the records, papers and property appertaining to it.

U. S. R. S. sec. 251. The Secretary of the Treasury shall make and issue, from time to time, such instructions and regulations to the several collectors, receivers, depositaries, officers, and others who may receive treasury notes, United States notes and other securities of the United States, or who may be in any way connected or employed in the appropriation and issue of the same, as he shall deem best calculated to promote the public convenience and security and to protect the United States as well as individuals from fraud and loss, or shall prescribe terms of interest, oaths, bonds and other papers, and rules and regulations not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the Internal Revenue laws, or in carrying out the provisions of law relating to raising revenue from members, or to duties on members or to warehousing, or shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law; he shall prescribe the forms of the annual statements to be submitted to Congress by him, showing the actual state of commerce and navigation between the United States and foreign countries or coastwise and between the collection districts of the United States in each year.

U. S. R. S. sec. 321. The Commissioner of Internal Revenue under the direction of the Secretary of the Treasury shall have general superintendence of the assessment and collection of all duties and taxes now or hereafter imposed by law, providing internal revenue; and shall prepare and distribute all the instructions, regulations, directions, forms, instruments and other matters pertaining to the collection and assessment of internal revenue, and shall provide hydrometers and proper and sufficient adhesive stamps and stamps or dies, for expressing and denoting stamp duties, or in the case of personal duties, the amount thereof, and alter and renew or replace such stamps from time to time as occasion may require. He may also contract for or produce the printing of requested forms, decisions and regulations, but the printing of such forms, decisions and regulations shall be done at the Public Printing Office, unless the Public Printer shall be unable to perform work; Provided that the Commissioner of Internal Revenue may under such regulations as may be established by the Secretary of the Treasury after due public notice, receive bids and make contracts for supplying stationery, blank books and blanks to the collectors in the several collection districts, the expenses of assessing and the expense of the collection of internal revenue.

Sec. 3152. The Commissioner of Internal Revenue may whenever in his judgment the necessities of the service so require, employ competent agents, not exceeding at any time thirty-five in number, to be paid such compensation as he may deem proper, not exceeding in aggregate any appropriation made for that purpose; and he may at his discretion, assign any such agent to duty under the direction of any officer of Internal Revenue, or to such other special duty as he may deem necessary; and no general or special agent or inspector, by whatever designation he may be known, of the treasury department in connection with the Internal Revenue, except inspectors of tobacco, snuff and cigars, and except as provided for in this title, shall be appointed, commissioned, employed or continued in office. The agents whose employment is authorized by this section shall be known distinctly as internal revenue agents, and they shall have all the powers of entry and examination conferred upon any officer of internal revenue, by sections 3177, 3277, 3286, and 3318 of the Revised Statutes and all the provisions of said sections, including those imposing fines, penalties, forfeitures or other punishments for the enforcement thereof are hereby made applicable to the action of internal revenue agents in the same manner as if such agents were especially named in each of said sections.

U. S. R. S. sec. 3163. Every collector within his collection district and every internal revenue agent shall see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with; and shall aid in the prevention, detection and punishment of any frauds in relation thereto. It shall be the duty of every collector and of every internal revenue agent to report to the Commissioner in writing any neglect of duty, incompetency, delinquency or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts in each case and any evidence sustaining the same. The Commissioner may transfer any inspector, gauger or storekeeper, or storekeeper and gauger from one distillery or other place of duty, or from one collection district to another.

Sec. 3164. It shall be the duty of every collector of internal revenue to report within ten days to the District Attorney of the District in which any fine, penalty or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses and which may come to his knowledge, from time to time, stating the provisions of the law believed to be violated, and if any collector shall, in any case fail to report to the proper district attorney as prescribed in this section his right to any compensation, benefit or allowance in such case shall be forfeited to the United States, and the same may, in the discretion of the Secretary of the Treasury be awarded to such persons as may make complaint and prosecute the same to judgment or conviction.

Sec. 3165. Every collector, deputy collector and inspector is authorized to administer oaths, and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law, or regulation, authorized by law, to be taken.

Sec. 3172. That every collector shall, from time to time, cause his deputies to proceed through every part of his district, and inquire after and concerning all persons therein who are liable to pay any internal revenue and all

persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate such objects.

Sec. 3173. That it shall be the duty of any person, partnership firm, association or corporation made liable to any duty, special tax, stamp or tax imposed by law, when not otherwise provided for, in case of a special tax on or before the 31st day of July in each year, and in case of income taxes, on or before the first Monday in March of each year, and in other cases before the day on which taxes accrue, to make a list or return verified by oath or affirmation, to the collector or deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares and merchandise, made or sold and charged with a tax, the several rates and aggregate amount according to the forms and regulations to be prescribed by the commissioner of internal revenue, under the direction of the Secretary of the Treasury, for which such person, partnership, firm, association or corporation is liable; provided, that if any person liable to pay any duty or tax or owning, possessing or having the care or management of property, goods, wares and merchandise, articles or objects liable to any duty, tax or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax aforesaid then and in that case it shall be the duty of the collector or deputy collector to make such list or return, which being distinctly read, consented to and signed and verified by oath or affirmation by the person so owning, possessing or having the care and management as aforesaid, may be received as the list of such person; Provided further, that in case no annual list or return has been rendered by such person to the collector or deputy collector, as required by law and the person shall be absent from his or her residence or place of business at the time the collector or deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit it in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum; verified by oath or affirmation. And if any person on being notified, or required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax, fails to do so at the time required, or delivers and return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person or any other person having possession, custody or care of books of account, containing entries relating to the business of such person, or any other person he may deem proper to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state, in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such state, he may enter any collection district where such person may be found, and there make the examination herein authorized.

And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was Commissioner.

Sec. 3174. Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and a certificate of service signed by such deputy shall be evidence of the facts he states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

Sec. 3175. Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories, as required, the collectors may apply to the judge of the district court, or to a commissioner of the circuit court of the United States for the District within which the person so summoned resides for an attachment against him as for contempt. It shall be the duty of the judge or commissioner to hear the application, and if satisfactory proof is made to issue an attachment directed to some proper officer for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper, not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons, and to punish such person for his default or disobedience.

Sec. 3176. When any person, corporation, company or association refuses or neglects to render any return or list, the collector or any deputy collector shall make, according to the best knowledge which he can obtain, including that derived from the evidence elicited by examination of the collector and on his own view and information, such list or return, according to the form prescribed of the income, property and objects liable to taxation owned or possessed or under the care or management of such person, or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally, he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence. to make a list or return, or to verify the same as aforesaid, he shall add fifty per cent to such tax. In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall in all cases be collected at the same time and in the same manner as the tax, unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax, and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all lawful purposes.

Sec. 3177. Any collector, deputy collector or inspector may enter in the day time any buildings or place where any articles or objects subject to tax are made, produced or kept within his district, so far as it may be necessary for the purpose of examining said articles or objects. And any owner of such

building or place, or person having the agency or superintendency of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while open in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector or inspector in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued, any property, articles or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, except in cases otherwise provided for shall, for every such offense, forfeit and pay the sum of five hundred dollars or double the value of the property so rescued, or be imprisoned for a term not exceeding two years at the discretion of the court.

Sec. 3178. All persons required to make returns or lists of objects charged with an internal tax shall declare therein whether the several rates and amounts are stated according to their values in legal tender currency, or according to their values in coined money, and in case of neglect or refusal so to declare to the satisfaction of the collector receiving such returns or list, such officer shall make returns or lists for such persons so neglecting or refusing, as in cases of persons neglecting or refusing to make the returns or lists required by law, and the Commissioner shall assess the tax thereon, and add thereto the amount imposed by law in cases of such neglect or refusal. And whenever the rates and amounts contained in the returns or lists are stated in coined money, the collector receiving the same shall reduce them to their equivalent in legal tender currency, according to the value of such coined money in such currency for the time covered by such returns.

Sec. 3179. Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account or statement with intent to defeat or evade the valuation, enumeration or assessment intended to be made, or being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court with costs of prosecution.

Sec. 3180. Whenever there are in any district any articles not owned or possessed by or under the care or control of any person within said district and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his deputies shall enter the premises where such articles are situated, and shall take such view thereof as may be necessary and make lists of the same, according to the form prescribed. Said lists to be subscribed by such collector or deputy collector and shall be taken as sufficient lists of such articles for all purposes.

Sec. 3182. The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue act where such taxes have not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been, or shall be, delivered to any col

lector is imperfect or incomplete, in consequence of the omission of the name of any person liable to tax, or in consequence of any omission or understatement or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return as aforesaid there has been or shall be any omission, undervaluation and understatement or false or fraudulent statement, together with the amount for which such person may be liable above the amount for which he may have been or shall be assessed upon any return made as aforesaid, and he shall certify and return such list to the collector as required by law, and all provisions of law for the ascertainment or liability of any tax, or the assessment or collection thereof shall be held to apply so far as may be necessary to the proceedings herein authorized and directed.

Sec. 3183. It shall be the duty of the collectors or their deputies in their respective districts, and they are authorized to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting when the same are in payment for stamps sold and delivered; but any collector or deputy collector shall issue a receipt in lieu of stamp representing a tax.

Sec. 3184. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person in writing to pay any tax stated therein to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such tax and demanding payment thereof. If such person does not pay the tax within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes, and the penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

Sec. 3186. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid with the interest, penalties and costs that may accrue in addition thereto upon the property and rights to property belonging to such person.

Sec. 3187. If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said tax, with five per centum additional thereto and interest as aforesaid by distraint and sale in the manner herein provided, of the goods, chattels or other effects, including stocks, securities and evidences of debt of the person delinquent as aforesaid; Provided that there be exempted from distraint and sale if belonging to the head of a family school books and wearing apparel necessary for said family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market value of such sheep shall not exceed fifty dollars; and necessary food for such cow, hogs and sheep for a period not exceeding thirty

days, fuel to an amount not greater in value than twenty five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools or implements of a trade or profession to an amount not greater than one hundred dollars shall be also exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

Sec. 3188. In such case of neglect or refusal the collector may levy or by warrant may authorize a deputy collector to levy upon all property and rights to property, except as are exempt by the preceding section, belonging to such person or on which the said lien exists for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs and expenses of such levy.

Sec. 3189. All persons and officers of companies or corporations are required on demand of a collector or deputy collector about to distrain, or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint on the property or rights of property liable to distraint for the tax due as aforesaid.

Sec. 3190. When distraint is made as aforesaid the officer charged with the collection shall make, or cause to be made, an account of the goods or effects distrained, and a copy of which signed by the officer making such distraint shall be left with the owner or possessor of such goods or effects at his dwelling or usual place of business with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded and the time and place of sale, and the said officer shall forthwith cause an injunction to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Said notice shall specify the articles distrained and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property, and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer if he deems it advisable, but not for a time to exceed in all thirty days.

Sec. 3191. When property subject to tax, or upon which a tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof, to the payment of the tax, if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon.

Sec. 3192. When any property advertised for sale under distraint as aforesaid is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding

the said tax. All property so purchased may be sold by the collector under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the Commissioner a definite amount of all charges incurred in such sales, and in case of sale shall pay into the treasury the surplus, if any there be, after defraying all lawful charges and fees.

Sec. 3193. In any case of distraint for the payment of the taxes aforesaid the goods, chattels or effects so distrained shall be restored to the owner or possessor if prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.

Sec. 3194. In all cases of sale as aforesaid, the certificate of such sale shall be prima facie evidence of the right of the officer to make such sale and conclusive evidence of the regularity of his proceedings in making the same, and shall transfer to the purchaser all right, title and interest of said delinquent in and to the property sold, and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company or association of said transfer, and shall be authority to such corporation, company or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates which shall be void, whether cancelled or not. And said certificates, where the subject of sale is securities or other evidences of debt shall be good and valid receipts to the person holding the same as against any person holding or claiming to hold possession of such securities or other evidences of debt.

Sec. 3195. When any property liable to distraint for taxes is not divisible so as to enable the collector by a sale of part thereof to raise the whole amount of the tax with all costs, charges and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs and charges, shall be paid to the person legally entitled to receive the same; or if he cannot be found, or refuses to receive the same, shall be deposited in the treasury of the United States to be there held for his use until he makes application therefor to the Secretary of the Treasury, who upon such application and satisfactory proofs in support thereof, shall by warrant on the treasury cause the same to be paid to the applicant.

Sec. 3196. When goods, chattels or effects sufficient to satisfy the tax imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

Sec. 3197. The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where such estate is situated, a notice in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where such officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notifi-

cation to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post office nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and the officer's fee of ten dollars. When the real estate so seized consists of several distinct tracts or parcels, the officer making the sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges and fees aforesaid to such several tracts or parcels, or to any of them in estimating the minimum price aforesaid. If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder. And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and at the proper time, as hereafter provided, shall execute a deed therefor after its preparation and the instrument of approval as to its form by the United States District Attorney for the district in which the property is situated, and shall without delay cause the same to be duly recorded in the proper register of deeds and immediately thereafter shall transmit such deed to the commissioner of internal revenue. And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid the officer shall forthwith proceed to again sell said estate in the same manner. And it is hereby provided that all certificates of purchase, and deeds of property purchased by the United States under the internal revenue laws for taxes, or under executions issued from the United States courts which now are or hereafter may be found in the office of any collector, United States Marshal, or United States District Attorney shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue, and it is hereby further provided that for the preparation and approval by the United States District Attorney of each deed as above required, a fee of $5.00 shall be allowed to that officer to be paid by the United States, and which he shall account for in his emolument returns.

Sec. 3198. Under sale of real estate as provided in the preceding section and the payment of the purchase money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate shall not be redeemed in the manner and within the time herein provided, the said collector or deputy collector shall execute to the said purchaser upon his surrender of said certificate a deed to the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate and in accordance with the laws of the state in which said real estate is situate, upon the subject of sales of real estate under execution.

Sec. 3199. The deed of sale given in pursuance of the preceding section shall

be prima facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title and interest of the party delinquent in and to the real estate thus sold at the time the lien of the United States attached thereto.

Sec. 3200. Any collector or deputy collector may, for the collection of tax imposed upon any person committed to him for collection, seize and sell the lands of such person situated in any other collection district within the state in which such officer resides and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district.

Sec. 3201. Any person whose estate may be proceeded against as aforesaid, shall have the right to pay the amount due together with the costs and charges thereon to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Sec. 3202. The owners of any real estate sold as aforesaid or their heirs, executors or administrators of any person having any interest therein or a lien thereof, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof at any time within one year after the sale thereof, upon payment to the purchaser, but in case he cannot be found within the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum.

Sec. 3203. It shall be the duty of every collector to keep a record of all sales of land made in his collection district, whether by himself or his deputies, or by any collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed, and all proceedings in making said sale, the amount of fees and expenses, the name of the purchaser and the date of the deed, and said record shall be certified by the officer making the sale, and on or before the 15th day of each succeeding month he shall transmit a copy of said record of the preceding month to the Commissioner of Internal Revenue. And it shall be the duty of every deputy making the sale as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof. In case of the death or removal of the collector, or expiration of his term of office, or from any other cause said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Sec. 3204. When any lands sold as aforesaid are redeemed, as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of said redemption.

Sec. 3205. Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him together with all expenses is fully paid.

Sec. 3206. The Commissioner of Internal Revenue shall, by regulation, determine the fees and charges to be allowed in all cases of distraint and other seizures, and shall have power to determine whether any expenses incurred in making any distraint or seizure was necessary.

Sec. 3207. In any case where there has been a refusal or neglect to pay any tax and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed in a district or circuit court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by delinquent, or in which he has any right, title or interest to the payment of such tax Any person having liens upon or claiming any interest in the real estate, sought to be subject, as aforesaid, shall be made parties to such proceedings and be brought into court as provided in other suits in chancery therein. And the said court shall at the term next after the parties have been duly notified of the proceedings, unless otherwise authorized by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims and liens upon the real estate in question, and in all cases wrere a claim or interest of the United States is established shall decree a sale of said real estate by the proper officer of the court, and the distribution of the proceeds of such sale, according to the findings of the court in respect to the interests of the parties and of the United States.

Sec. 3208. The Commissioner of Internal Revenue shall have charge of all real estate which is now or shall become the property of the United States by judgment or forfeiture, under the Internal Revenue Laws, or which has been or shall be assigned, set off or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and all trusts created for the use of the United States in payment of such debts due them; and with the approval of the Secretary of the Treasury may at public vendue, upon not less than twenty days' notice sell and dispose of all real estate owned or held by the United States aforesaid; and until such sale the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury may lease such real estate owned as aforesaid, on such terms and for such period as they shall deem expedient. And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon at the rate of one per centum per month to the United States within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

Sec. 3209. Whenever a collector has on any such list duly returned to him the name of any person not within his collection district who is liable to such tax, or any person so liable, who has in the collection district in which he resides no sufficient property subject to seizure or distraint from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and

to which such person shall have been removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

Sec. 3214. No suit for the recovery of taxes or of any fine, penalty or forfeiture shall be commenced undess the Commissioner of Internal Revenue authorizes or sanctions the proceedings; provided that in case of any suit for penalties or forfeitures brought upon information received from any person other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

Sec. 3216. All judgments and moneys recovered or received for taxes unless costs, forfeitures and penalties, shall be paid to collectors as internal taxes are required to be paid.

Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected and all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also, to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court for any internal taxes collected by him, with the costs and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector or inspector in any suit brought against him by reason of anything done in the due performance of his official duty: Provided, that where a second assessment is made in case of a list, statement or return, which in the opinion of the collector or deputy collector was false or fraudulent or contained any understatement or undervaluation and such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded or paid back, unless it is proved that said list, statement or return was not false or fraudulent, and did not contain any understatement or undervaluation.

Sec. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

Sec. 3225. When a second assessment is made in the case of any list, statement or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement or return was not false nor fraudulent and did not contain any understatement or undervaluation.

Sec. 3226. No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive, or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein; provided that if said decision is

delayed more than six months from the date of said appeal, then the said suit may be brought without first having a decision of the Commissioner at any time within the period limited in the next section.

Sec. 3227. No suit or proceedings for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court unless the same is brought within two years next after the cause of action accrued; Provided that actions for such claims which accrued prior to June six, eighteen hundred and seventy-two may be brought within the year from said date, and that where any such claim was pending before the commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section.

Sec. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive, or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued; provided that claims which accrue prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

Sec. 3229. The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the Internal Revenue laws instead of commencing suit thereon; and with the advice and consent of the said Secretary and the recommendation of the attorney-general, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner, the opinion of the Solicitor of Internal Revenue or of the officer acting as such with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed and the amount actually paid in accordance with the terms of the compromise.

APPENDIX RR.

THE TUCKER ACT.

(ACT OF MARCH 3RD, 1887 U. S. COMP. STAT. 1901, PAGES 752-758).

An Act to Provide for the Bringing of Suits against the Government of the United States.

Be it enacted, etc., that the court of claims shall have jurisdiction to hear and determine the following matters:

First. All claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty if the United States were suable; Provided, however, that nothing in this section shall be construed as giving to either of the courts herein mentioned jurisdiction to hear and determine claims growing out of the late civil war, commonly known as "war claims," or to hear and determine other claims which have heretofore been rejected or reported on adversely by any Court, Department or Commission authorized to hear and determine the same.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other damages whatsoever on the part of the Government of the United States against any claimant against the Government in a state court, provided that no suit against the Government of the United States shall be allowed under this act unless the same shall have been brought within six years after the right accrued for which the claim is made; Provided further, that no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States shall be allowed under this act, unless an account for said fees shall have been rendered and finally acted upon according to the provisions of the act of July 31, 1894 (chapter 174, 28 Stat. at Large, p. 162), and unless the proper county officer fails to finally act thereon within six months after the account is received in said office.

Sec. 2. That the District Court of the United States shall have concurrent jurisdiction with the court of claims as to all matters named in the preceding section, where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have concurrent jurisdiction in all cases where the amount of said claim exceeds one thousand dollars but does not exceed ten thousand dollars. All causes brought and tried under the provisions of the act shall be tried by a court without a jury. The jurisdiction hereby conferred upon said circuit and district courts shall not extend to cases brought to recover fees, salary or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers, or as assignees or legal representatives thereof.

Sec. 3. That whenever any person shall present his petition to the court of claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor or surety or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such guarantor, surety or personal representative has held any office or agency under the United States, or entered into any contract therewith, in which it may be, or has been, claimed that an indebtedness to the United States has arisen and exists, and that he or the person he represents has applied to the proper department of the Government, and that the account of such fees, agency or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and that said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of such department and to the Attorney General of the United States, proceed to hear the parties to ascertain the amount, if any, due the United States on such account. The Attorney General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court, or of the Supreme Court of the United States to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of said account so found due by the court, shall discharge such obligation. An action shall accrue to the United States against such principal or surety or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court. Unless suit shall be brought within said time such claim and the claim on the original indebtedness shall be forever barred.

Sec. 4. That the jurisdiction of the respective courts of the United States proceeding in this matter, including the right of inspection and appeal shall be governed by the law now in force in so far as the same is applicable, and not inconsistent with the provisions of this act; and the course of procedure shall be in accordance with the established rules of said respective courts and of such additions and modifications thereof as said courts may adopt.

Sec. 5. That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition duly verified, with the clerk of the respective court having jurisdiction of the cause, in the district where the plaintiff resides. Said petition shall set forth the full name and residence of the plaintiff, the nature of his claim and a succinct statement of the facts upon which the claim is based, the money or counterclaim sought to be recovered and praying the court for a judgment or decree upon the facts allowed.

Sec. 6. That the plaintiff shall cause a copy of his petition, filed under the preceding section, to be served upon the District Attorney of the United States in the district wherein suit is brought, and shall mail a copy of the same by registered letter to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted, an affidavit of such service and the mailing of such letter. It shall be the duty of the District Attorney upon whom service of petition is made as aforesaid, to appear and defend the interests of the government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case, to file an appeal, answer

or demurrer on the part of the Government, and to file notice of any counter-claim, set-off, claim for damages, or other judgment or defense whatsoever of the Government in the premises. Provided, that should the District Attorney neglect or refuse to file the appeal, answer, demurrer or defense as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim or any part thereof unless he shall establish the same by proof satisfactory to the court.

Sec. 7. That it shall be the duty of the court to cause a written opinion to be filed in the cause, setting forth the specific findings by the court of the facts thereunder, and the conclusions of the court upon all questions of law involved in the cause, and to render judgment thereon. If the suit be in equity or admiralty the court shall proceed with the same according to the rules of such courts.

Sec. 8. That in the trial of any suit brought under any of the provisions of this act, no person shall be excluded as a witness because he is a party to the interest in said suit, and any plaintiff or party in interest may be examined as a witness on the part of the Government. Section 1079 of the Revised Statutes is hereby repealed. Provisions of section 1080 of the Revised Statutes shall apply to cases under this act.

Sec. 9. That the plaintiff or the United States in any suit brought under the provisions of this act shall have the same rights of appeal or writ of error as are now reserved under the statutes of the United States in that behalf made and upon the conditions and limitations therein contained. The modes of procedure in claiming and perfecting an appeal or writ of error shall conform in all respects and as near as may be to the statutes and rules of court governing appeals and writs of error in like cases.

Sec. 10. That where the findings of fact and the law applicable thereto have been filed in any case as provided in section 6 of this act, and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the attorney general of the United States certified copies of all papers filed in the cause, with a transcript of the testimony taken, the written findings of the court and his written opinion as to the same; whereupon the attorney general shall determine and direct whether an appeal or writ of error shall be taken or not, and when so directed the district attorney shall cause an appeal or writ of error to be perfected in accordance with the terms of the statutes and rules of practice governing the same; provided that no appeal or writ of error shall be allowed for six months from the judgment or decree in such suit. From the date of such final judgment or decree interest shall be computed thereon at the rate of four per centum per annum until the time when an appropriation is made for the payment of the judgment or decree.

Sec. 11. That the attorney general shall report to Congress at the beginning of each session of Congress the suits under this act in which a final judgment or decree has been rendered, the date of each and a statement of the costs taxed in each case.

Sec. 12. That when any claim or matter may be pending in any of the executive departments which involves controversies, questions of fact, or loss, the head of such department, with the consent of the claimant, may transmit the same with the vouchers, papers, proofs and documents pertaining thereto

to said court of claims, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found the court shall report its findings to the department by which it was transmitted.

Sec. 13. That in every case which shall come to the court of claims or is now pending therein, under the provisions of an act entitled "An Act to afford assistance and relief to Congress and the executive departments in the investigation of claims and judgments against the Government," approved March 3, 1883, if it shall appear to the satisfaction of the court upon the evidence established that it has jurisdiction to render judgment or decree thereon under existing laws or under the provisions of this act, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and report its proceedings thereunder to either House of Congress or to the department by which the same was referred to said court.

Sec. 14. That whenever any bill except for pensions shall be pending in either house of Congress, providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, bounty, or any present, the House in which such bill is pending may refer the same to the court of claims who shall proceed with the same in accordance with the provisions of an act approved March 3rd, 1883, entitled "An Act to afford assistance and relief to Congress and the executive departments in the investigation of claims and judgments against the Government," and report to said House the facts in the case and the amount where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed, or which shall be claimed to exclude the claimant for not having resorted to any original legal remedy.

Sec. 15. If the Government of the United States shall put in issue the right of the plaintiff to recover the court may in its discretion allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same and fees paid to the clerk of the court.

Sec. 16. That all laws and parts of laws not inconsistent with this act are hereby repealed.

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